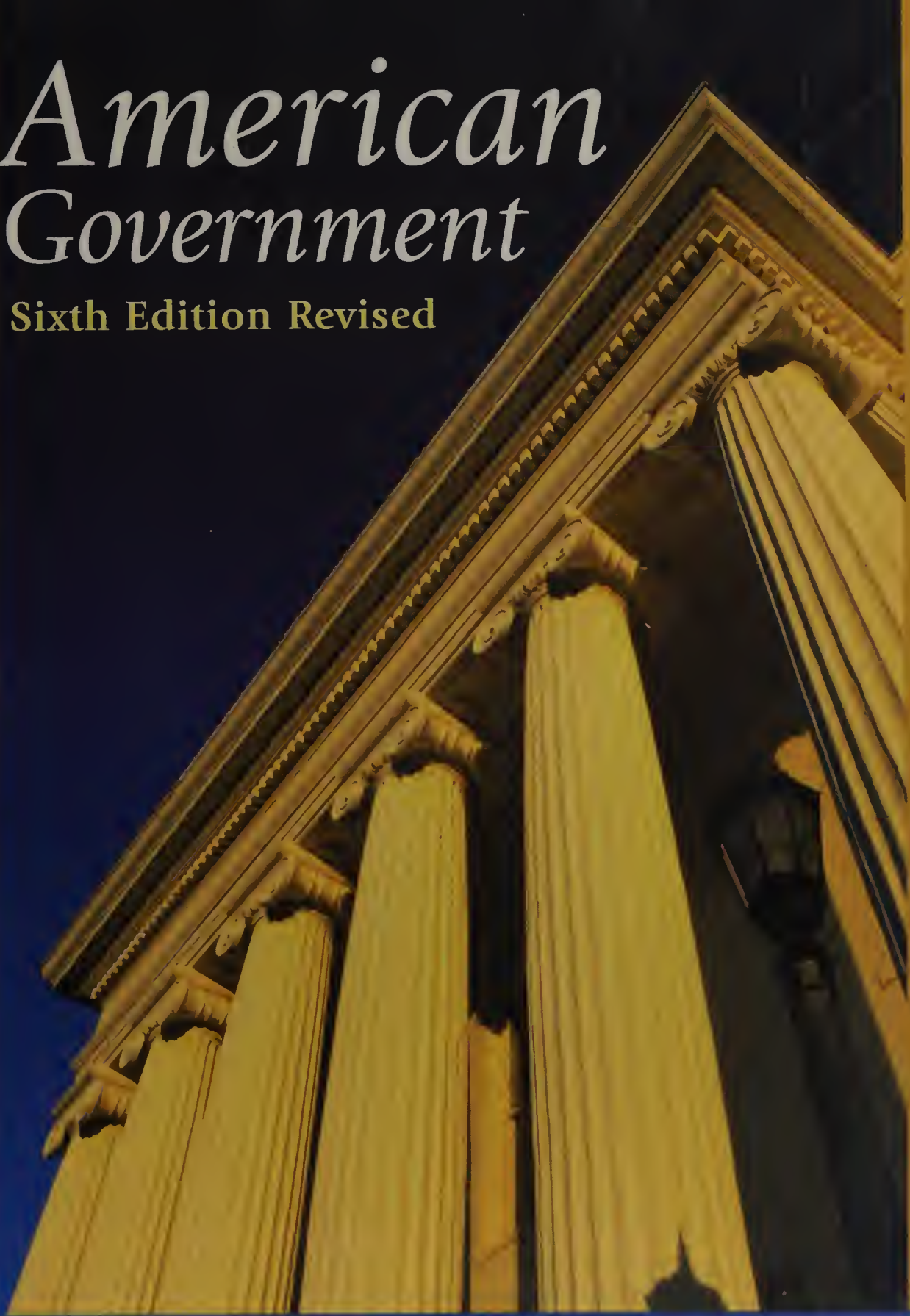
American Government

Sixth Edition Revised



CUSTOM EDITION FOR WAYNE COUNTY COMMUNITY COLLEGE

Gitelson / Dudley / Dubnick

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Second Edition

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Wayne County Community College

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Contents

Preface xv
About the Authors xxi
Figures and Tables xxiii

1 Myth and Reality in American Politics 1

Myths in Popular Culture Mirrors and Shapers of Images 5

Myths and American Government 8

The Nature of Government and Politics 12

Fundamental Issues of Government and Politics 14

Who Should Govern? 15

Closer to Home Who Governs? 17

Where Should Governmental Authority Be Vested? 18 / How Much Should Government Do? 19

Overview of this Book 21

Net Work 22

2 Constitutional Foundations 24

The Setting for Constitutional Change 27

The Framers 28

The Roots of the Constitution 30

The British Constitutional Heritage 30 / The Colonial Heritage 32 / Intellectual Roots 32 / The Onset of Revolution 33

What the Framers Did 35

Establishing Legitimacy 35 / Structuring Authority 35 / Distributing and Describing Governmental Powers 39 / Limiting Governmental Powers 42

Closer to Home Changing State Constitutions 44

Allowing for Change 44

The Enduring Principles 49

The Rule of Law 49

Myths in Popular Culture A Paper Constitution in the Television Age 50

Republicanism 52 / Separation of Powers 53 / Checks and Balances 54 / National Supremacy 57

Conclusion: Neither Timeless nor Irrelevant 57

Summary 58

Net Work 59

3 Federalism and Intergovernmental Relations 60

The Evolution of American Federalism 64

Battles over Meaning (1790s–1860s) 65 / From Separation to Cooperation (1860s–1920s) 66 / Toward Cooperation and Local Participation (1930s–1950s) 67 / The Urban Focus (1960s–1970s) 68 / Reforming and Devolving (1970s–1990s) 69

Closer to Home Governing Education 70

Restoring Dual Federalism (2000 and beyond?) 75

The Actors of American Federalism 76

National Government Actors 76 / States in the Federal System 79 / Local Governments 81 / The Intergovernmental Lobby 83 / The Role of the Citizen 84 / Many Dramas on the Stage 85

Myths in Popular Culture The Political "Image" of the South 86

Conclusion: The Myths Versus the Dramas 87

Summary 88

Net Work 88

4 The Heritage of Rights and Liberties 89

Applying the Bill of Rights to the States 91

The First Amendment Freedoms 92

Freedom of Speech 93 / Freedom of the Press 96

Myths in Popular Culture Free (the) Music? 98

Freedom of Religion 100

Due Process and Crime 103

Right to Counsel 104 / Searches and Seizures 106 / Cruel and Unusual Punishment 107

Privacy 109

Abortion 109 / Doctor-Assisted Suicide 110

Equal Protection of the Laws 111

The Continuing Struggle Against Racism 111 / Sex Discrimination 115 / Emerging Issues of Discrimination 119 / Affirmative Action 122

Closer to Home Civil Rights and Liberties in State Constitutions 123

Conclusion: Absolutes and Qualifications 124

Summary 124

Net Work 125

5 Public Opinion and Political Participation 126

What Is Public Opinion? 129

How We Develop Our Beliefs and Opinions 130

Agents of Political Socialization 130 / Adult Socialization 133

How Polls Work 134

The Paradox of Public Opinion 136

Closer to Home Strangers in the Night: The National, State, or Local Government? 138

Group Opinion: Diversity and Uniformity 138

Public Opinion and Public Policy 142

Avenues of Political Participation 142

Myths in Popular Culture Spin City: Sex, Lies, and Political Myths 143

Acting on Opinions 144 / What Influences Participation 146 / A Closer Look at Women, African Americans, Hispanics, and Asian Americans 146

Conclusion: Many Minorities, Much Activity 149

Summary 150

Net Work 151

6 Political Parties 152

What Parties Are and What They Do 153

The Three-headed Political Giant 155

Who Belongs to Major Parties and Why? 156

In the Driver's Seat: Democrats and Republicans 156 / A Back-Seat in Politics? Independents 158 / If Parties Are So Important, What Do They Do? 159

Myths in Popular Culture Cartoons and the Parties: "Stop Them Damned Pictures" 162

American-Style Politics: The Two-Party System 164
The Winners: The Democrats and the Republicans 164 / Realignment of Parties 165 / Why Two Parties? 167 / The Hidden Actors: Third Parties in the United States 168

Party Structure from the Bottom Up 170
Local Parties 170

Closer to Home "Dead on Arrival?": Third Parties in our Towns and States 171
State Parties 172 / National Parties 172

Conclusion: Decline or Transformation of Political Parties? 174

Summary 175

Net Work 176

7 Campaigns and Elections 177

Nominations: The Selection Process 180
Why Do People Run? 180 / The Caucus: Old-Fashioned Politics 180 / Primaries: New Kid on the Block 81 / The Changing Role of Nominating Conventions 183 / Who Gets Nominated? 184

The Race For Office 185
Financing Campaigns: The Buying or Selling of Office? 185

Closer to Home Campaign Financing: The Money Game Closer to Home 190
Organizing Campaigns: The Old and the New 191

The Media and Campaigns: Are We Brainwashed? 194

Campaigns and Political Parties 195

Voting and Elections 196
Who Is Allowed to Vote? 196 / Who Votes? 198 / Why Do People Vote the Way They Do? 199

The 2000 Election 202

The Electoral College 203

Promises, Promises: The Link Between Campaigns and Public Policy 205

Myths in Popular Culture Radiohead, Bulworth, and Campaign Lies 206

Conclusion: Do Elections Matter? 207

Summary 208

Net Work 208

8 Interest Groups 210

Movers and Shakers: Interest and Other Advocacy Groups 212
Interest Groups 212 / Lobbyists 216 / Political Action Committees (PACs) 216

What Makes an Interest Group Powerful? 218
Size 218 / Unity 219 / Leadership 220 / Information and Expertise 220 / Money 220

Closer to Home Money, Money Everywhere? Interest Groups and PACs 221

Interest Group Tactics: You Don't Lobby with Hundred-Dollar Bills and Wild Parties 222
Lobbying 223 / Electioneering and Policymaking 224 / Building Coalitions 227 / Grassroots Pressure: Power to the People 227 / Litigation 228

Myths in Popular Culture Selling Out to the Special Interests 230
Hard-line Tactics 231

Interest Groups and Democracy 231

Conclusion: Corrupt or Constructive? 231

Summary 232

Net Work 233

9 Media And Politics 234

The Rise of the Media 235
The Early Days 236 / The Broadcast Media 237 / Diversity and Concentration 238

Closer to Home If It Bleeds, It Leads 239
Government Regulation 241

What Is News? 242

The Effects of the Mass Media 244

Myths in Popular Culture The Perfect Villain 245
Setting the Agenda 246 / Conducting Politics in the Media: Old and New 247

The Uneasy Alliance Between Government and the Media 250
Covering the President 251 / Covering Congress 253 / Covering the Courts 254

Conclusion: The Great Manipulator? 254

Summary 255

Net Work 256

10 Congress 257

Who Serves in Congress and the Paths That Lead There 258
Who Serves in Congress? 259 / Getting Elected 260

Closer to Home Legislating in the States 263

The Work of Congress 264
Making Laws 264 / The Power to Tax 264 / Producing the Budget 265 / Casework 267 / Congressional Oversight 267

The Organization of Congress 269
Bicameralism 270 / Congressional Leadership 270 / The Committee System 271 / The Nonofficial Groups 274 / The Congressional Staff 275

How a Bill Becomes a Law 276
Committee Consideration 278 / Floor Action 278 / Conference Work 279

Influences on Congressional Voting 280

Myths in Popular Culture Good and Evil in the U.S. Senate 281

Conclusion: Is Congress the Broken Branch? 282

Summary 283

Net Work 283

11 The Presidency 285

The Growth of the Presidency 286
The First Presidents 287 / Congress Reasserts Power 288 / The Modern Presidency 289

Presidential Roles 291
Chief of State 292 / Chief Executive 292 / Chief Diplomat 294 / Commander in Chief 296 / Chief Legislator 299

Closer to Home The View from the Governors' Mansions 303
The Seamless Web 304

The Institutional Presidency 304
The Cabinet 305 / The Executive Office of the President 306 / The White House Office 308 / The Vice President 309

Presidential Influence 310
Persuading Congress 310

Myths in Popular Culture A Hero for President 311
Public Opinion 313

Conclusion: The All-Powerful President? 315

Summary 315

Net Work 316

12 Bureaucracy 318

A Profile of the Federal Bureaucracy 320
Who Are the Bureaucrats? 321

Myths in Popular Culture Hollywood Bureaucrats . . . and Other Myths 322
What Do Federal Bureaucrats Do? 325 / Where Do They Work? 327 / A Diverse Institution 333

Growth of the American Bureaucracy 334
Overview of Bureaucratic Growth 334 / Explaining the Growth of the Bureaucracy 337

Bureaucratic Power 338
The Sources of Bureaucratic Power 339 / Limiting Bureaucratic Power 343

Bureaucratic Problems and Reforms 346
Bureaucratic Pathologies 347 / Calls for Reform 349

Closer to Home Government as Innovator! 350

Conclusion: Expectations and Government Operations 353

Summary 353

Net Work 354

13 Courts, Judges, and the Law 355

The Origins and Types of American Law 357

The Structure of the Court Systems 358

The Federal and State Court Systems 359
Lower Courts 359 / The Supreme Court 362 / Specialized Courts 364 / State Court Systems 364

Myths in Popular Culture O.J., *Ally McBeal,* and Criminal Justice 365
Interactions Among Court Systems 366

Recruiting and Removing Judges 366
Federal Judges 367 / Who Becomes a Federal Judge? 371 / Removing Judges 372

Closer to Home Selecting State Court Judges 373

The Supreme Court at Work 374

Oral Argument 375 / Conference Work 376 / Writing and Announcing the Opinion 377 / Interpreting the Constitution 378

The Implementation of Court Decisions 380

Compliance by Other Courts 380 / Congress and the President 381

Conclusion: The Courts Are Not What They Seem 383

Summary 383

Net Work 384

14 Domestic Policy and Policymaking 385

Making Public Policy 388

Stages in the Policymaking Process 389 / Models of Decision Making 392

Economic Policy 393

Monetary and Fiscal Policies 395 / Economic Development Policies 403

Closer to Home An Economic War Between the States? 404

Economic Regulatory Policies 407

Social Policies 408

Aiding the Poor 409 / Meeting the Needs of the General Public 414

Myths in Popular Culture The West Wing 418

Conclusion: The Complexity of American Public Policy 420

Summary 422

Net Work 422

15 Foreign and Defense Policy 423

A Historic Sense of Vulnerability 425

1800–1914: Isolationism, Unilateralism, and Expansionism 426 / 1914–1960: America Emerges as World Leader 427 / 1960s–1980s: Containment in a Changing World 430

Myths in Popular Culture Americans at War—In the Movies 433

1990s: Rethinking Foreign and Defense Policies 436

Making Foreign and Defense Policy 439

The President and the White House 440 / The Bureaucracies 441 / The Congressional Role in Policymaking 442 / The Mass Media and Attentive Publics 444 / The Role of Public Opinion 446

Diplomatic Tools 448

Military and Defense Strategies 450
Guns or Butter? 451

Closer to Home When Guns Were like Butter . . . 454
Alternative Military Strategies 456

Conclusion: The Reshaping of Foreign and Defense Policy 458

Summary 459

Net Work 459

Credits 461

Appendixes

The Declaration of Independence in Congress, July 4, 1776 A-1 / The Constitution of the United States of America A-3 / Federalist No. 10, 1787 A-14 / Federalist No. 51, 1788 A-18 / Presidents of the United States A-22

References A-23

Suggested Readings A-48

Appendix B
Federalism B1

Appendix C
Civil Rights C1

Index I-1

Preface

In preparing every edition of *American Government,* including this new sixth edition, we have committed ourselves to two major goals: (1) to write a concise yet comprehensive textbook that (2) helps students think critically about the U.S. political system. To meet the first objective, we have organized the book into fifteen chapters that follow the coverage of the typical introductory American Government course. As importantly, we have kept each chapter to a reasonable length and have provided up-to-date illustrations and other pedagogical tools.

To achieve our second objective, we employ a distinctive approach that has worked well for each of us in the classroom—an exploration of the contrast between the myths that many Americans believe about their government and the realities of how our political system operates. A myth, as defined in Chapter 1, is a shorthand way of thinking about the role and activities of government and politics. Myths often take the form of stories, stereotypes, proverbial sayings, or pervasive and popular attitudes that help us comprehend "the way things are"—or at least the way we believe them to be.

While often helping us make sense of American government and politics, many myths also reflect and promote some of the misunderstandings that ordinary citizens have about the political system and how it works. We believe that through understanding some of the myths of American politics and how they evolved, students will be able to think more critically and systematically about our complex political system. Therefore, we begin each chapter with a vignette and a short statement of one or two preconceptions commonly found in political discussions.

Many changes have taken place in our nation and the world since the first edition of *American Government* was published in 1988. In this sixth edition, as in the previous five, we have paid attention to both the changing realities and the changing myths of American government. Thus, in preparing the sixth edition, we have thoroughly reviewed and updated all chapters, in terms of both research and current events. As a result, in this edition we have included thorough coverage of the 2000 elections, the impeachment and acquittal of President Clinton, and the effects of recent Supreme Court decisions in reshaping intergovernmental relations. We have given additional emphasis to the media, public opinion, the Supreme Court, and domestic and international policy. We have also scrutinized every chapter to refine, clarify, and tighten the text.

The new myths have been more difficult to pinpoint, but we have tracked them through attention to trends in America's ever-changing popular culture. If the popular culture reflected a trend during the 1990s, it was that of a

strong and growing public distrust of government. The popular belief in government inefficiency and political conspiracies seemed pervasive for a time. But during the period in which we were making revisions of this latest edition, we also noted some countertrends developing. The popularity of a new television series on the inner workings of the White House and the Washington, D.C. political arena bodes well for bridging the gap between myth and reality. Just as we were putting the final touches on this sixth edition, a controversy was brewing about the historical distortions of a new movie on the American Revolution. In short, there are indications that Americans are becoming more aware of the myths we hold about our political system and the importance of checking these against the realities that directly affect our lives.

New Features in the Sixth Edition

We have incorporated three new features into this edition in order to add clarity to our students' understanding of American government and politics. First, we have included critical thinking questions in the margins of the textbook. With the addition of these questions in the body of the text, we hope to stimulate students by posing questions that will help them think more constructively and critically about the political process.

The second new feature is the placement of key terms and concepts in the margins of the textbook. Students will have immediate access to important definitions and key concepts that are discussed in the text, which will facilitate their understanding of the various themes covered in *American Government.*

Finally, we have added a new section called *Net Work* at the end of each chapter. American government courses and reading materials have entered a new age with the growth of the Internet and other digital media. In the Net Work section, we list significant web sites relevant to the topics covered in that chapter. We also pose some questions and offer challenging exercises that can help students see what the Internet has to offer in terms of political information. In effect, students are encouraged to use the web sites found in our book in order to expand and enhance the material found in these pages.

Additional Highlights of the Sixth Edition

Discussion of the constitutional foundations of federalism has been moved to Chapter 2, "Constitutional Foundations," from Chapter 3. Chapter 2 also includes a more in-depth discussion of the impeachment process. Chapter 3, "Federalism and Intergovernmental Relations," now focuses more on the practical dimensions of federalism, including an analysis of how recent Supreme Court decisions and welfare reform efforts have reshaped intergovernmental relations. In Chapter 4, "The Heritage of Rights and Liberties," we cover recent

Supreme Court decisions on the right to die and affirmative action, as well as other important cases.

Chapter 5, "Public Opinion and Political Participation," includes new polls on the changing attitudes of Americans to a variety of issues regarding the role of government. Chapter 6, "Political Parties," discusses the role of third parties in the 2000 elections and the changing roles that the Republican and Democratic parties play in the electoral process. Chapter 7, "Campaigns and Elections," includes timely coverage of the 2000 elections and campaign finance reform efforts. Chapter 8, "Interest Groups," updates our coverage of interest groups and political action committees. Chapter 9, "Media and Politics," has been revised and updated to cover the 2000 elections and the rise of new media, including the Internet.

In Chapter 10, "Congress," we discuss several structural changes that the recent Republican majority has instituted in the U.S. House of Representatives. In Chapter 11, "The Presidency," we provide new discussions of presidential power in the Clinton administration. Chapter 12, "Bureaucracy," discusses the influence of the National Performance Review. In Chapter 13, "Courts, Judges, and the Law," we provide more coverage of the "original intent" approach to constitutional interpretation and counter-arguments to this approach. We also discuss the Clinton administration's appointments to the federal courts.

Both policy chapters—Chapter 14, "Domestic Policy and Policymaking," and Chapter 15, "Foreign and Defense Policy"—have been updated. In Chapter 14, more discussion of the future of Social Security has been added, and the section on welfare policy has been revised in light of the 1996 Welfare Reform Act. Chapter 15 gives special attention to the dynamic changes that have occurred in both foreign and defense policy since the end of the Cold War, focusing especially on globalization.

In addition to these content revisions, we have also thoroughly revised other features of the book. Many chapter-opening vignettes, "Myths in Popular Culture" boxes, and "Closer to Home" boxes have been updated. We continue the tradition in our "Myth in Popular Culture" boxes of focusing on the way different forms and transmitters of popular culture—movies, cartoons, popular music—reflect and shape popular myths about the way government and politics function.

To help students understand the various topics covered in the text, we have added several new pedagogical features in each chapter, as described above. We have also retained popular and helpful features of previous editions. For example, each chapter opens with a preview outline and ends with a point-by-point summary, as well as a conclusion that provides a retrospective glance at the highlighted myths in light of the whole chapter discussion.

Several useful appendices are included at the end of the text, including the Declaration of Independence, the Constitution, Federalist Papers Nos. 10 and 51, and a list of presidents. We have also provided an updated chapter-by-chapter listing of references and suggested readings.

Ancillary Package

The sixth edition of *American Government* offers an extensive package of supplementary materials for both the student and instructor:

- The ***American Government*, Sixth Edition web site,** accessible via the Houghton Mifflin College Division web site at http://college.hmco.com, contains useful student study aids, including chapter outlines, ACE practice tests, and chapter-specific web links. It also includes additional Myths features highlighting commonly held misconceptions about government. The sixth edition web site also links to **Political SourceNet,** Houghton Mifflin's American Government resource, containing primary source documents, Internet exercises, and **Crosstabs 4.0.** Crosstabs allows students to cross-tabulate survey data on the 1996 Presidential election and voting records from the 105th Congress in order to analyze voter attitudes and behavior.
- The **Study Guide,** revised by Char Miller of George Mason University, is keyed closely to the text. Each chapter contains chapter summaries, learning objectives, key terms and critical thinking exercises, and practice multiple-choice and essay questions, all of which have been extensively updated for the Sixth Edition.
- The **Instructor's Resource Manual with Test Items,** written and revised by the authors, provides a chapter overview and one or two lecture outlines for each chapter. One lecture outline parallels the text; the other (where provided) is a bonus lecture that explores a specific chapter theme or concept in greater detail. Each chapter also includes learning objectives, critical thinking activities, classroom activities, a list of transparencies and videos related to topics covered in the chapter, and a list of suggested readings. The Test Bank portion of the Instructor's Manual provides an average of 55 multiple-choice test items and 10 short essay questions for each chapter. The test questions have been extensively revised for the sixth edition.
- The test items are also available to adopters in electronic format for Windows. The **HMTesting** software provides a complete testing solution, with test generation, classroom administration, and online testing features.
- Twenty multicolor **Transparencies** of charts and graphs from the text are assembled in a separate package.
- **NEW!** The illustrations in the transparency package are also available as **PowerPoint Slides,** downloadable from the ***American Government*, Sixth Edition Instructor Textbook Site** (go to http://college.hmco.com). Adopters of the text may obtain the password for this page from their Houghton Mifflin sales representative.
- **NEW!** For instructors who wish to include a unit on state and local politics in their course, a chapter-length **State and Local Government Supplement** may be packaged with the text at no extra cost.

Acknowledgments

Many people contribute to the success of a textbook, and such is the case with the sixth edition of *American Government*. We gratefully acknowledge the many helpful comments of the following reviewers: John R. Baker (Wittenberg University); Carol Sears Botsch (University of South Carolina–Aiken); Joel E. Brooks (Illinois State University); Paul B. Davis (Truckee Meadows Community College); John M. Marion (Indiana University–South Bend); Mary M. McKenzie (Grossmont College); Charles L. Sewall, Jr. (Robert Morris College); and Stuart Susnick (Washtenaw Community College). We would also like to thank Char Miller for writing a first-rate revision of the Study Guide, and Nicholas Bauroth and Kevin Fullam at Loyola University of Chicago for their very able research assistance.

In a venture of this magnitude, authors realize that the success of a textbook is closely tied to the editors associated with the project. We have been fortunate enough to work with a dedicated, creative, and sensitive editorial staff at Houghton Mifflin. For the sixth edition, we are indebted to Katherine Meisenheimer, Melissa Mashburn, Jean Woy, and Carla Thompson.

We want to give an unqualified thanks, with love, to Idy, Laura, and Rachel Gitelson; Judy, Pat, and Michael Dudley; and Randi, Heather, and P. D. Dubnick, for all of their support and patience during the writing of this book.

Finally, we would like to emphasize the equal role played by all three authors in the writing of this textbook. There was no junior partner in this project. Alan Gitelson's name appears first on the cover because he administered the project. A flip of the coin determined the order of the names for Bob Dudley and Mel Dubnick.

A. R. G.
R. L. D.
M. J. D.

About the Authors

Alan Gitelson is Professor of Political Science and former Chair of the Department of Political Science at Loyola University of Chicago. He received his Ph.D. from the Maxwell School, Syracuse University. In addition to numerous scholarly articles, his books include *American Political Parties: Stability and Change* (with M. Margaret Conway and Frank Feigert), and *Public Policy and Economic Institutions* (with Melvin Dubnick). Dr. Gitelson serves as a member of the American Political Science Association Standing Committee on Education and Professional Development. He is a frequent guest commentator on radio and television, speaking on topics including campaigns and elections, campaign financing, political parties, the media, and interest groups. He has been interviewed on National Public Radio's *Morning Edition* and *All Things Considered*.

In 1996, Dr. Gitelson was designated a Master Teacher by the College of Arts and Sciences at Loyola University of Chicago. In 1998, he received the "Outstanding Faculty Member of the Year" award from Loyola University of Chicago. He was awarded the Edwin T. and Vivijeanne F. Sujack Award for Teaching Excellence in 1999. When not teaching, reading, or writing, Alan enjoys music, travel, and sailing with his wife, Idy, and his daughters, Laura and Rachel.



Left to right: Melvin Dubnick, Robert Dudley, Alan Gitelson

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Dr. Dudley has also served as a consultant to the U.S. Department of Transportation, the National Institutes of Health, the Center for Scientific Review, and the National Gambling Impact Study Commission.

When not working, he prefers to spend his time with his wife, Judy, and, when they are around, their two college-age sons, Patrick and Michael. He and Judy enjoy biking and hiking in the Virginia countryside.

Melvin Dubnick is Professor of Political Science and Public Administration at Rutgers University–Newark. He received his Ph.D. from the University of Colorado–Boulder in 1974, and he has held positions at Emporia State University, Loyola University of Chicago, the University of Kansas, and Baruch College/City University of New York. He has also taught courses in Japan, Korea, Panama, and Colombia for Oklahoma University and the School of International and Public Affairs at Columbia University. In addition to *American Government,* Dr. Dubnick has coauthored textbooks on public policy analysis and American public administration. He has served as managing editor of *Public Administration Review,* as well as coeditor-in-chief of *Policy Studies Journal.*

Dr. Dubnick is actively engaged in efforts to improve and advance political science education. He is cochair of the American Political Science Association's Task Force on Civic Education in the Next Century and manages APSA-CIVED, a listserv focused on issues related to civic education. He is currently experimenting with distance learning technologies and the integration of the Internet in the political science classroom.

In his spare time, he is an active partner in Pencilneck Records, which promotes the music of his son's band, The Dubnicks.

Figures and Tables

Chapter 1

Figure 1.1 *Issues and Ideologies* 20

Chapter 2

Table 2.1 *Comparing America's Two Constitutions* 36
Table 2.2 *The Major Compromises* 38
Figure 2.1 *Constitutional Basis of the Federal System* 40
Table 2.3 *The Bill of Rights Adopted in 1791* 43
Figure 2.2 *How the Constitution Can Be Amended* 45
Table 2.4 *Amendments 11–27 to the Constitution* 47
Figure 2.3 *Separation of Powers and Checks and Balances* 55

Chapter 3

Figure 3.1 *Funding for Elementary and Secondary Education* 71

Chapter 5

Figure 5.1 *How Much Do You Trust the Government?* 137
Table 5.1 *The Political Orientation of College Freshmen: The Class of 2003* 139
Figure 5.2 *What Do College Freshmen Think?* 140

Chapter 6

Figure 6.1 *Changes in Party Identification 1984–2000* 157
Table 6.1 *Comparison Between the 2000 Democratic and Republican Party Platforms* 160–161

Chapter 7

Table 7.1 *Candidate Spending in the 2000 Presidential Election* 186
Table 7.2 *A Scorecard on Campaign Promises* 207
Figure 7.1 *The United States According to Electoral College Votes* 204

Chapter 8

Figure 8.1 *An Explosion of PACs* 214
Table 8.1 *What Lobbyists Do* 223
Table 8.2 *Top Fifteen PACs: Contributions to Congressional and Presidential Candidates* 225

Chapter 10

Figure 10.1 *2000 Reapportionment: Changes in the House of Representatives* 269
Table 10.1 *Standing Committees of the House and Senate, 106th Congress (1999–2000)* 273
Figure 10.2 *How a Bill Becomes a Law* 277

Chapter 11

Figure 11.1 *Presidential Approval, 1992–2000* 314

Chapter 12

Figure 12.1 *Is Government Run for the Benefit of All? 1964–1998* 321
Table 12.1 *Pay for Meritorious Service: The Salary Scale for White Collar Federal Employees* 325
Figure 12.2 *Government of the United States* 329
Figure 12.3 *Relative Size of the Federal Bureaucracy* 336

Chapter 13

Figure 13.1 *Organization of the Federal Court System* 360
Figure 13.2 *U.S. Circuit Courts of Appeals* 363
Table 13.1 *The Rehnquist Court* 370

Chapter 14

Figure 14.1 *The Answer Depends on the Question* 388
Figure 14.2 *The Six Stages of Policymaking* 389
Figure 14.3 *The Long Reach of the Federal Reserve* 397
Figure 14.4 *The Federal Budget Deficit, 1980–2004 (est.)* 399
Figure 14.5 *Mandatory and Discretionary Spending, 1980–2005 (est.)* 401
Figure 14.6 *Social Security Contributions and Benefits* 416

Chapter 15

Figure 15.1 *Preferred U.S. Role in World Affairs* 447
Figure 15.2 *Spending Patterns for National Defense* 452
Figure 15.3 *Relative Spending on National Defense, 1942–2004 (est.)* 453
Table 15.1 *Military Actions in a Post–Cold War Year, 1994* 455

CHAPTER 1

Myth and Reality in American Politics

- Myths and American Government
- The Nature of Government and Politics
- Fundamental Issues of Government and Politics

Who Should Govern? Authority, power
Where Should Governmental Authority Be Vested? Local, state, and national government
How Much Should Government Do? Ideological perspectives

- Overview of This Book

MYTH & REALITY

Do Americans trust their governments?

MYTH & REALITY

Do you distrust your government? Do you feel disconnected from those who govern in Washington, the state capital, or City Hall? Do you believe that public officials consistently fail to act in the interest of the general public? Are you convinced that government officials are hiding information from the public or, even worse, engaged in secret conspiracies designed to serve evil purposes?

If you answered 'yes' to any of those questions, you are not alone. In one survey conducted in October 1998, 73 percent of those polled indicated that they trusted the government in Washington "to do what was right" only "some of the time" or "never." Only 26 percent trusted the federal government most of the time or just about always. To put those results in perspective, *forty years earlier, the same questions generated just the opposite results:* In 1958, 73 percent of survey participants felt they could trust Washington most of the time or always, while only 23 percent responded that officials can be trusted to do the right thing only some of the time or never. In another survey conducted in 1999, 64 percent agreed with the statement "I feel distant and disconnected from government." Those keeping track of such surveys were not surprised by these results. They note that there has been a consistent downward trend in public responses to questions about "trust in government" ever since the middle 1960s.[1]

The American public has also become more negative about whose interests government serves and whether public officials really care about them. In 1964, only 29 percent of those polled in one survey felt that government was run for the benefit of "a few big interests," while 64 percent responded that it was operated for the "benefit of all." Again, more than three decades later those figures are almost completely turned around. Reinforcing that view are responses to questions about whether public officials care about what the public thinks. In 1960, 73 percent of respondents in a national survey said government officials did care; in 1998, only 25 percent felt the same way.[2]

But there are more than just polling data to support an argument that Americans are suspicious of their government. Consider the following:

> *ITEM:* In August 1999, the *Dallas Morning News* reported that an ex-Federal Bureau of Investigation agent had confirmed that agents had used pyrotechnic tear gas devices on the day that the Branch Davidian compound at Waco, Texas, went up in flames six years earlier. That admission contradicted years of denials by the agency's leaders and the U.S. attorney general, and led to a special investigation of what many people called a conspiracy to cover up the government's role in a tragedy that killed more than 80 people.[3]

> *ITEM:* Three years earlier, the *San Jose (California) Mercury News* ran a widely reported story that traced the origins and spread of the nation's crack cocaine epidemic to a Latin American drug ring created with the support of the U.S. Central Intelligence Agency (CIA). The report confirmed what many in the African-American community felt they had known all along—that once again they were victims of a racist conspiracy in which government

played a key role. On November 15, 1996, the head of the CIA stood before a neighborhood group in Los Angeles and called the accusation made against his organization "an appalling charge that goes to the heart of this country." To say that "an agency of the United States government, founded to protect Americans, helped introduce drugs and poison into our children and helped kill their future—no one who heads a government agency . . . can let such an allegation stand. I will get to the bottom of it, and I will let you know the results of what I've found."[4]

ITEM: In September 1993, the Fox TV network began broadcasting a new series on Friday evenings portraying the efforts of two FBI agents to uncover the truth behind unsolved and extraordinary cases linked to the "paranormal" that lay buried in file cabinets in the bureau's basement. By the year 2000, there had been 160 TV episodes and a feature-length movie, and in the process *The X-Files* had established itself as an award-winning show with a large and loyal audience. A central feature of the series' ongoing plotline is the existence of a conspiracy at the highest levels of government.

ITEM: Movies involving government conspiracies emerged as a regular feature of Hollywood's offerings in the second half of the 1990s. In Hollywood, 1997 proved to be a banner year for government conspiracies. Among the major feature films involving government cover-ups and corruption that were released that year were *L.A. Confidential* with Kevin Spacey and Russell Crowe, *Murder at 1600* with Wesley Snipes and Diane Lane, *Night Falls on Manhattan* with Andy Garcia and Ian Holm, *Copland* with Sylvester Stallone and Harvey Keitel, and *Shadow Conspiracy* with Charlie Sheen and Donald Sutherland. The conspiracy plots continued in 1998 with release of the *X-Files* movie, *Conspiracy Theory* with Mel Gibson and Julia Roberts, and *Enemy of the State* with Will Smith and Gene Hackman.

For many Americans, these news stories and cultural trends are very familiar. Stories about government corruption and cover-ups are nothing new. Conspiracy theories about government involvement in the assassinations of President John F. Kennedy, Martin Luther King, Jr., and Malcolm X have been subjects for magazine stories, movies, and books for decades.

In fact, public distrust of government and conspiracy theories go back much farther. In a recently published book, historian Garry Wills shows that distrust of government has deep historical roots in the United States. Anti-government values, he argues, were important from the outset of our national history. They have become ingrained in our political and popular culture, and their influence can be seen throughout our history.[5]

In 1963, Richard Hofstadter wrote about a "paranoid style" in American politics traceable to at least the late 1700s. Rumors of a conspiracy among members of the secretive Freemason societies—who included such notables as George Washington, Benjamin Franklin, Thomas Jefferson, and Andrew Jackson—continued to be widespread throughout the nineteenth century. By the 1850s, those

believing in a Catholic conspiracy involving papal bribery of top government officials were having a political impact among various segments of the citizenry. Pre–Civil War abolitionists spoke of conspiracies among slaveholding southern politicians, and turn-of-the-century populists focused on a perceived conspiracy among international bankers, that supposedly shaped American currency policies to their advantage. This paranoid style of politics continued into the twentieth century. Munitions manufacturers were said to have started the First World War, and communists and socialists were increasingly viewed with suspicion between the wars. By 1951, Senator Joseph McCarthy spoke openly of a communist-led "great conspiracy" at the highest levels of the national government. In these and other forms, conspiracy theories and the distrust and cynicism about government and politics that they generate have played a constant role in American politics. The accusations regarding FBI cover-ups and CIA involvement in bringing crack cocaine to inner-city African American communities are merely the latest in a long line of such theories.

CRITICAL THINKING

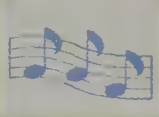
Why do Americans distrust government?

Why have Americans been so prone to distrust their government and adopt conspiracy theories about public officials? Some might argue that it is because government indeed cannot be trusted to do what is right, and because conspiracies have existed in the past and might in fact be at work today. Of greater importance for Wills, Hofstadter, and other students of American history, however, is the existence of underlying myths about the workings of American government that build upon these negative views of government and public officials. For Wills, the pervasive distrust promoted by antigovernment values has constantly distorted the way we Americans think about our government. We continue to operate under the assumption that government is a "necessary evil" that should always be minimized and viewed with suspicion. Hofstadter argues that the most significant fact about the paranoid style of our politics is not that some Americans "see conspiracies or plots here and there in history," but that they see such grand and elaborate conspiracies as the central "motive force" in history and in the operations of government.

These two important myths—the myth of "government as a necessary evil" and the "grand conspiracy" myth—have been more visible in some periods than in others. A number of observers of the American political scene believe that we have entered a period in which public distrust has reached critical levels, with conspiracy theories being taken seriously by a growing number of citizens. We see the results in the many actions taken to counter the rumors of elaborate government conspiracies, such as the CIA director's visit to South-Central Los Angeles. We also see the power of the grand conspiracy myth in popular cultural images (see Myths in Popular Culture).

Are these feelings of distrust and disconnectedness warranted? Does government have no place in our lives? Are those who govern truly "evil"? Do our public officials really engage in the kinds of cover-ups, corruption, and conspiracies portrayed on TV and in the movies? We believe it is worthwhile for every American to confront such questions directly. But to do so, you must be knowledgeable about the U.S. political system. Only then will you be able to sort out

MYTHS IN POPULAR CULTURE


Mirrors and Shapers of Images

Popular culture—the music and movies and stories that we hear and see in the mass media every day of our lives—plays an important role in American social life. At times, the words and images generated and marketed by the "pop culture" industry reflect the realities of American life; at other times, they help shape that reality.

For example, over the past fifty years, the American fascination with conspiracies has shown up in Hollywood movies. At first, the conspiracies took the form of alien invasions from outer space, the most notable being the 1956 classic *Invasion of the Body Snatchers*. In 1964, the plot for *Seven Days in May* focused on a conspiracy by the military to take over the U.S. government. In a 1967 spy spoof, *The President's Analyst*, the telephone company is behind a grab for total control. During the 1970s, the conspiracy thriller took a more serious form. In 1974 Warren Beatty starred in *The Parallax View* as a journalist who was being hunted down by those who thought he knew too much about a Kennedyesque assassination, and in 1976 the real-life conspiracy behind Nixon's cover-up of the Watergate break-in was the subject of *All the President's Men*, starring Robert Redford and Dustin Hoffman. Three years later Jane Fonda and Michael Douglas coproduced and costarred in *The China Syndrome*, a movie that suggested a conspiracy among large utility companies and the government to hide the dangers of nuclear power. Coincidentally, the movie was released just as the Three Mile Island accident brought the issue of nuclear power safety to the front pages of every newspaper in the country. Oliver Stone's controversial *JFK* (1991) was based on the long-standing view that there were more people involved in President John F. Kennedy's assassination than merely Lee Harvey Oswald, and a later political movie of his, *Nixon* (1995), contains scenes implying the existence of a right-wing conspiracy to control the highest levels of U.S. government. By the middle 1990s, conspiracy plotlines had become one of the formulas Hollywood used for producing action films, such as *Mission Impossible* (1996), *Extreme Measures* (1996), *Shadow Conspiracy* (1997), *Mercury Rising* (1998), and *The Matrix* (1999). In addition, dramas and thrillers such as *A Few Good Men* (1992), *Courage Under Fire* (1996), and *Absolute Power* (1997) were built on the premise that government cover-ups are possible and even commonplace.

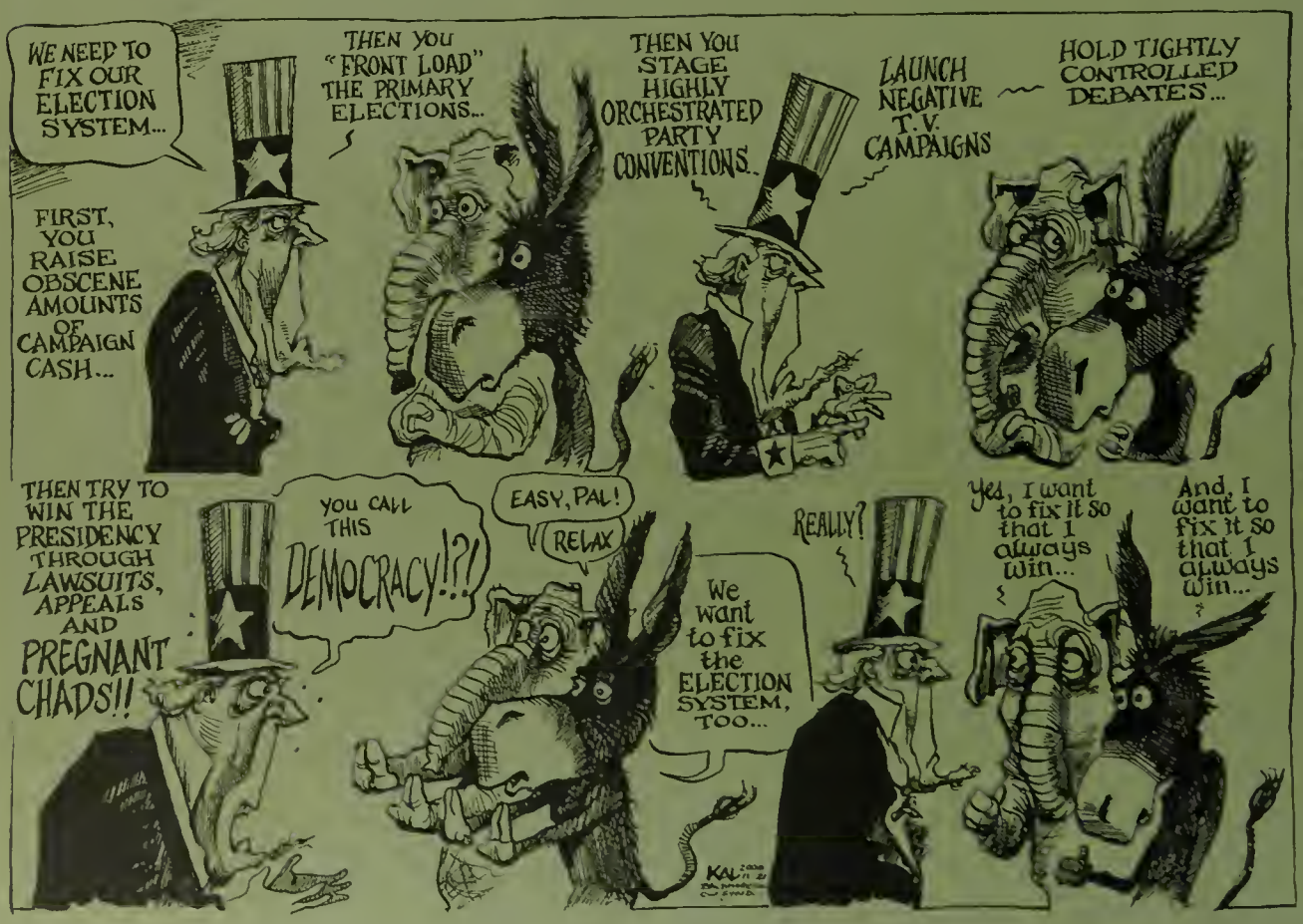
Popular music has also mirrored the politics of the day—and at times actually taken the lead in trying to influence and shape political action. Starting in the early 1960s, folk singers gained a significant audience for their performances of songs that protested injustice and war. Woody Guthrie's tunes from the 1930s (e.g., "This Land Is Your Land") and songs by Pete Seeger ("Where Have All the Flowers Gone?" and "If I Had a Hammer") made it to the top of the *Billboard* charts in 1962. In 1963 the folk trio of Peter, Paul, and Mary sold millions of recordings of "Blowin' in the Wind," a song by a very young Bob Dylan. The music itself became a political force as these and other popular "hits" were heard again and again at civil rights and antiwar rallies over the next decade.

Throughout our history, popular culture has played a major role in reflecting and shaping public opinion, political activity, and even the development of governmental institutions in our nation. To some degree, it has described, distorted, enhanced, and shaped our images of government and politics in the United States.

The political cartoon, for example, has often satirized and parodied politicians and governmental activity. Around the turn of the century, the "muckraking" novel was used to shape public opinion about the evils of economic robber barons and machine politics. Music was also a partner in political protest and dissent—long before Guthrie and Seeger and Dylan set their lyrics to music. And movies have been an important part of our political culture since the beginning of the twentieth century, when, as a nation, we first viewed one of the earliest popular silent films, *Birth of a Nation,* a 1915 epic saga of the Civil War that glorified the Ku Klux Klan.

It is important that we recognize the role that popular culture plays in our political lives, for today the music and movies and words that we hear or read are a major source of the images and myths we have about government and politics. Throughout this book, in special boxes labeled "Myths in Popular Culture," we will describe how mythic images of politics and government are occasionally shaped, reinforced, and subsequently distorted by movies, cartoons, and other vehicles of popular culture that have such an important impact on how we, as Americans, view the governmental process.

There are a number of books that you can read to help you understand how popular culture affects our views of politics and society in general. For example, see Stephen Powers, David J. Rothman, and Stanley Rothman, *Hollywood's America: Social and Political Themes in Motion Pictures* (Boulder, Colo.: Westview Press, 1996); and S. Robert Lichter, Linda Lichter, and Stanley Rothman, *Prime Time: How TV Portrays American Culture* (Washington, D.C.: Regnery Publishing, 1994). For a perspective on how popular music has played a role in our culture, see Bruce Pollack, *Hipper Than Our Kids* (New York: Shirmer Books, 1993).



the realities from the myths of American government. This book is intended to help you gain that knowledge.

We will not try to fool you: Learning about American government and politics is not easy. As you will see in the chapters that follow, the framers of the U.S. Constitution designed a complicated system of government, and more than two hundred years of use have made that system even more elaborate and sometimes difficult to understand. Thus, learning to appreciate the dynamics of the American constitutional system and the many forces that shape its form and actions can be a challenging task.

We wrote this textbook in the conviction that the American public should have at least some basic knowledge about the American system of government. Can you identify the vice president of the United States? Do you know how many years a U.S. senator serves between elections, or how we determine how many U.S. senators represent each of the fifty states? In a 1991 survey, only 25 percent of those polled knew that senators serve six-year terms. In 1994, 35 percent of those asked in a national survey could not identify the vice president, and almost one-third of high school seniors surveyed believe that the size of a state's population determines the number of senators it has. By 1999, the Department of Education reported that 35 percent of high school seniors did not understand the fundamentals of American government, and less than 10 percent "were able to give two reasons why it is important for citizens to be involved in a democratic society."[6]

In the overall scheme of modern life, do you consider these facts important? These and similar survey findings are shocking to those who believe that Americans must know a great deal about their government if they are to live up to their obligations as American citizens. Others are not as disappointed, for Americans have often proven themselves to be good citizens without knowing some of the more "trivial" details of government. Despite a lack of basic knowledge, many Americans seem to "sense" what is going on in government and know how they feel about the major issues.

One of the central questions we ask in this book is, where do Americans get that "civic sense" of government? When thinking about their government, most Americans rely on what they see and hear every day. They draw on the images they see on the nightly news or in daily newspapers as well as on the opinions and attitudes of those around them. Using these images and opinions, they are able to think and talk about the president and Congress haggling over health issues or anticrime laws, about recently announced Supreme Court decisions, about election campaigns, or about government policies and statements concerning the economy or foreign affairs.

Along with images and opinions, another source of information that Americans draw on is the stories they hear about government and the lessons they learn from them. Some of those stories are as fresh as yesterday's news of FBI cover-ups, campaign finance violations, presidential misbehavior, or how the U.S. Defense Department purchased $10,000 toilet seats for use in military aircraft; others are as old and familiar as the story of John Hancock signing the

Straight Talking

The deep discontent with government among Americans during the 1990s has also created a desire for leaders who demonstrate strong character and honesty. During the 2000 presidential primaries, Senator John McCain of Arizona called his campaign bus the "Straight Talk Express" and drew many followers from across the political spectrum as a result of his bluntness and his stature as a Vietnam War hero.



Declaration of Independence with an inscription so large that the British monarch could not miss it. Whether derived from today's headlines or our history books, however, these stories help shape our views of and attitudes toward American government and those who work in it. Most importantly, they reflect the multitude of myths that permeate the public's understanding of the American political system.[7]

Myths and American Government

Myths Stories, stereotypes, proverbial sayings, and pervasive attitudes that have an impact on the way we think about government and the American political system.

What are myths? In ancient times, myths were stories about a civilization's gods and heroes that helped members of those societies explain and understand the world around them. The ancient Greeks relied on stories about the gods on Mount Olympus to make sense of both the good and the bad things that happened to them. Similarly, the myths created by ancient Romans played a critical role in shaping their daily lives.[8] Many cultures still celebrate mythical traditions with holidays. In early October, for example, Koreans celebrate the birth of their nation's ancient founder, Tan-gun, the son of a heavenly prince who came to earth and married a bear that had turned into a woman.

The term **myth** is applied more broadly in our times. Myths are still associated with stories, but the focus of modern tales is not necessarily on gods and heroes. The story of George Washington saying to his father that he could not

tell a lie and admitting that he had indeed chopped down the cherry tree is mythical in the classic sense, as are the rags-to-riches stories of Horatio Alger with their message that hard work leads to success. But today there are equally powerful stories about our nation's leaders—about the lives and accomplishments of political families like the Roosevelts and the Kennedys, about individual presidents like Richard Nixon and Bill Clinton, and about institutions like the U.S. Senate and the Pentagon.

Such stories are a powerful force in shaping the public's views about government, as are stories about the actions of bureaucratic agencies and historical figures. For some people, the story about a government agency buying $10,000 toilet seats, for example, might confirm the widely held belief that government bureaucracy is inefficient and wasteful; on a different level, the story of John Hancock signing the Declaration of Independence supports the popular images of the American Revolution, what it stood for, and the risks and sacrifices made by those who chose to break with England in 1776. In each case, the myth helps shape our understanding of and attitudes toward our system of government.

Today, however, it is not the myth-as-story that is important. Instead, some of today's most important myths take the form of stereotypes (such as "All Democrats are big-spending liberals" and "Republicans are the party of big business"), proverbial sayings (such as "You can't fight city hall"), and pervasive attitudes (such as "All politicians are crooks") that have an impact on the way we think about government and the American political system.

CRITICAL THINKING

How do myths help us understand American government?

What roles do these myths play in our understanding of American government and politics? To what extent do these myths reflect reality? Are they merely innocent falsehoods that are used to make the complex world of American government seem simpler? Or are they distortions and untruths that help perpetuate the rule of a few?

Although the elaborate religious mythologies of ancient Greece and Rome are gone, modern societies, including our own, are no less influenced by myths. We rely on myths for a variety of reasons.[9] First, like the ancients, *we sometimes use myths to help us simplify the complex world in which we live.* Myths help us "to live in a world in which the causes" of our problems "are simple and neat and the remedies are apparent."[10] During the recession of the early 1990s, many Americans blamed the Japanese for the economic woes of the United States. Stories about unfair pricing strategies used by Japanese firms as well as widely publicized remarks by Japanese officials regarding poor American work habits helped fuel a myth about an "economic war" with Japan.[11] The popularity of both Japan-bashing and "buy American" campaigns reflected a tendency among too many Americans to seek scapegoats. In the meantime, these same Americans ignored the more complex national and international economic transitions that were responsible for the problems.[12]

Second, *myths often help us define our place in the world and provide us with a common social and political identity.*[13] Many of us perceive the United States in mythical terms: "as a community of free and equal self-governing citizens pursuing their individual ends in a spirit of tolerance for their religious and other forms

The Cherry Tree Myth

In this painting, titled *Parson Weems' Fable*, Grant Wood makes fun of the famous patriotic myth that George Washington could tell no lies. Wood painted young Washington with an adult face to emphasize the mythmaking of the adoring parson, who invented the story.



of diversity."[14] This and other myths held by Americans are supported by stories—of the first Thanksgiving, of Washington cutting down the cherry tree, of the deeds of young Abe Lincoln—that reinforce our national "belief in innocence, in honesty, in freedom, in the use of the wilderness, in adaptability, in the right of the individual to act freely without restraint. . . . Like all myths, their function is to say this is the way it was with Americans, this is the way it is, and this is the way it ought to be."[15] Without such myths, the political system might crumble, as that of the former Soviet Union and other parts of Eastern Europe did in the late 1980s and early 1990s.[16]

Third, *we frequently depend on myths to help guide and rationalize our behavior.* The "myth of good citizenship" tells us that we ought to vote because that is the only effective way to influence the behavior of government officials.[17] Myths also have an impact on how we conduct our foreign policy. Many critics of American foreign policy, for example, feel that our behavior in international affairs is shaped by a national myth of progress—a vision of "America as the wave of the future."[18] "Americans see history as a straight line," comments essayist Frances FitzGerald, "and themselves standing at the cutting edge of it as representatives for all mankind."[19]

By their very nature, myths influence our views of reality. But are they always outright lies? Americans often assume that myths are the opposite of truths and facts. That was the view expressed by President John F. Kennedy in a 1962 speech

in which he suggested that the "great enemy of truth is very often not the lie—deliberate, contrived, and dishonest—but the myth—persistent, persuasive, and unrealistic." Many myths are indeed outright lies, such as the long-held myth that women and blacks are intellectually or morally incapable of exercising the political judgment necessary to vote.[20] But *many myths are oversimplifications rather than outrageous falsehoods.* The myth that any boy or girl can grow up to be president of the United States is not precisely false, but it does offer a naive picture of the possibilities for most of America's children.

Another important aspect of myths is that many of the most significant ones *reflect views of the past or the future.* Many of the myths surrounding our most important governmental institutions—the U.S. Constitution, the presidency, Congress, and the Supreme Court—reflect the judgments of history on those bodies and the people who served in them. For example, although Abraham Lincoln is regarded today as one of the nation's great presidents, he was highly criticized by other politicians and the media while he occupied the White House. His status as a "great" president—much of it reflected in stories and myths—is well established in our eyes despite the low regard with which he was held by many of his contemporaries.

We also adopt many future-oriented myths that *often shape our expectations of what government officials can or will do.* For example, among military professionals, the failure of America's military venture in Vietnam during the 1960s and early 1970s was often blamed on the civilian authorities' lack of commitment to the military's efforts. What emerged from that experience can be called the "Vietnam War myth," a widely held belief among our nation's top military leaders that American military forces could not be successful in the future unless enough forces were sent to do the job and military commanders were allowed to act without interference from the politicians back in Washington. This myth had a significant influence on President George Bush's decisions concerning the use of military force against Iraq in 1991: He committed more than 500,000 U.S. troops and gave military commanders considerable freedom to determine how to deal with the forces of Saddam Hussein that had invaded Kuwait.[21] Given the relative success of that mission, some would argue that the myth was proved correct. However, for our purposes, what is important is that the Vietnam War myth had a significant impact on the attitudes and decisions of key policymakers as well as those of the American public.

And, of course, many of our myths *focus on the present to help us deal with what is taking place* in Washington, Topeka, or Sacramento right this moment. For example, many people believe in the "myth of special-interest government," which, correctly or incorrectly, helps many of us understand why Congress or the state legislature passes a law providing a new tax break for some major or local industry, even though this will ultimately increase the general taxpayer's burden. According to this myth, such laws are passed because special interests are able to hire high-priced lobbyists in Washington or the state capital who are effective in influencing legislators, whereas the general public has no one representing its interests (see Chapter 8, on interest groups).

From these examples, it should also be obvious that myths focus on a wide range of subjects—from the nature of American society and our national Constitution to everyday political and governmental activities. Individually, many of us have adopted myths about whether American society is racist or sexist, about the efficiency and effectiveness of local firefighters and law enforcement personnel, and about how important our participation in the political system is or can be. The wide range of topics covered by myths will become increasingly evident as you read through this textbook.

As a student of American government, it is essential that you understand the role that myths play in our governmental and political systems. By taking myths into account, you will be able to make sense of some features of the American system that might have puzzled you in the past. The fact that some myths are lies or distort the truth should put you on notice that we all must focus critical attention on what we hear and believe about government and politics. The fact that other myths help us get things done or resolve complicated problems should also be factored into your approach. In any case, you must also have a clear picture of the institutional and political reality that underpins our national government. Before we learn to run, however, we must learn to walk. Therefore, let us turn to some fundamental questions.

The Nature of Government and Politics

Government Those institutions and officials involved in writing and enacting laws and executing and enforcing public programs. In the United States, it consists of the executive, legislative, and judicial branches of federal, state, and local governmental systems.

What is **government,** and how does it carry out its varied responsibilities? In brief, government comprises *those institutions and officials whose purpose it is to write and enact laws and to execute and enforce public policy.* The goals of government in the United States are to maintain order through the rule of law, provide goods and services that benefit the lives of all citizens, and promote equality among members of society. The activities directed at achieving these goals are conducted by legislators, presidents or other chief executive officers (such as governors and mayors), judges, bureaucrats, and other elected and appointed officials who work in the institutions that make up the executive, legislative, and judicial branches of federal, state, and local governmental systems. Ultimately, these officials carry out their responsibilities through their authority to enact and enforce laws crucial to the functioning of government.

Politics The act of influencing or controlling government for the purpose of formulating or guiding public policy.

What is **politics?** In its most general sense, politics refers to *activities aimed at influencing or controlling government for the purpose of formulating or guiding public policy.* We will be discussing the politics of running for or being appointed to office; choosing policy alternatives; and bargaining, negotiating, and compromising to get policies enacted and executed. The politics of federal student loan programs, for example, involves presidents and legislators—influenced by students, parents, bankers, and college administrators—negotiating the issue of who receives loan benefits and who pays the bills.

CRITICAL THINKING

What has been the role of government in American history?

Has government always been important in the lives of most Americans? Despite some popular feelings to the contrary, the answer is probably yes. Historian Arthur M. Schlesinger, Jr., has pointed to a "cherished national myth" ascribing the economic development of the nation "to the operations of unfettered individual enterprise."[22] In fact, history shows that American government has always affected economic and social life. As early as colonial times, citizens expected government to perform such traditional functions as ensuring law and order and resisting foreign aggression. But even then government often did more.

From the time the first European settlers established communities in America, colonial governments, under the general authority of the British government, played a major role in developing and regulating local economies. Colonial (and later state) governments helped finance new enterprises, build ports, and construct turnpikes and canals; they sometimes even controlled wages and prices in local markets.

Shortly after the United States gained its independence, a series of laws written by Congress during the 1780s, collectively called the Northwest Ordinance, established rules for selling land and organizing local governments in the large territory stretching from the Ohio River to the Mississippi and north to the Great Lakes. Land was even reserved to support public schools. One of the earliest examples of the national government's role as "an active promoter of the economy" was its 1803 purchase of the Louisiana Territory. That vast region was vital to the prosperity of farmers working the lands along the entire length of the Mississippi.[23] Historians have also found other examples of early government efforts to plan, manage, and promote the new country's resources.[24]

The role of government continued to expand during the 1800s and early 1900s. Attempts to solve the economic and social problems that arose during the Great Depression of the 1930s, a depression that left millions of Americans jobless and homeless, led to an explosion of new programs. Soon an army of bureaucrats was managing the economy, promoting stable economic growth by helping to find jobs for the unemployed, and enforcing price controls designed to hold down the prices of goods and services.

As the United States became a more complex society, Americans demanded that the national government pay more attention to problems that had once been solved by families and communities—problems of the poor, the handicapped, and the elderly, among others. Ever since the New Deal, all Americans have been touched directly or indirectly by programs in such areas as early childhood nutrition, health care, unemployment benefits, food stamps, or social security.

Moreover, the government has not limited its interest to the economy and social welfare programs. As destruction threatened the vast American forests and pollution tainted air and water, Americans turned to government for environmental management, ranging from conservation programs to regulations affecting many polluting industries. In support of such goals as preventing environmental damage and ensuring a steady supply of energy, government has

The Environment

To protect Americans, the government is becoming increasingly involved in environmental management, in areas ranging from conservation programs to regulations affecting many polluting industries. Here a worker removes illegally dumped corrosive chemicals in Orange County, California.



lowered speed limits on highways, pushed for the development of nuclear energy, and implemented a variety of other policies.

In recent years, a growing number of Americans have concluded that perhaps they have depended too much on government for solving their problems. The 1994 congressional election results made it clear to many officials that the public wanted a change, if not a redirection, in government priorities. By 1996 the White House too was admitting it was time for a change. "The era of big government is over," declared President Bill Clinton in his State of the Union address. No one, however, denies that government has played, and continues to play, an important role in the development of the modern American social and economic system.

Fundamental Issues of Government and Politics

The fact that government has always played an important role in the lives of Americans does not mean that its activities have been uncontroversial. Several basic questions about government and politics have constantly emerged—questions about who should govern, where governmental authority should be located, and how much government should be doing.

CRITICAL THINKING

What are the basic questions we should ask about government?

Who Should Govern?

The fact that government plays a critical and pervasive role in everyone's life should automatically raise the question of who should control the use of this important social institution. In other words, who should govern? The answer to that question has taken two forms, one focused on governmental authority and the other on the wielding of governmental power.

Authority. For many students of government, the question "Who should govern?" refers to who should be officially authorized to control governmental institutions. In other words, who should exercise formal authority in government? **Authority** can be defined as the capacity to make and enforce public policies possessed by individuals who occupy formal governmental roles.

Authority The capacity to make and enforce public policies possessed by individuals who occupy formal governmental roles.

As we have already noted, government comprises institutions and officials who make and enforce public policies. The roles those officials play in conducting the business of government derive from a variety of sources. Some are defined in constitutions and other legal documents (see the discussion of constitutional foundations in Chapter 2), whereas others may be the result of long-standing traditions. In either case, when we are concerned with who should occupy those official roles, we are dealing with the issue of authority.

Among the first to try to answer the question of who should govern through the exercise of authority was the ancient Greek philosopher Aristotle. He classified governments into three types: government by one, by the few, and by the many. For each type, he believed, there is a good, or "right," form and a bad, or "wrong," form. A right form of government serves the common interests of the people, whereas a wrong form of government serves the personal interests of the ruler or rulers.

Aristotle called the government by the many that serves the common interests of the people a *polity* and a government by the many that serves their personal interests a *democracy*. Like many other political thinkers through the ages, Aristotle feared democracy, for he assumed that self-interest would rule if government were turned over to the "rabble in the streets." In fact, his other term for democracy was "mobocracy," or rule by the mob.

Democracy In the American sense, a system of government derived from belief in government based on the consent and the will of the majority.

Americans admire democracy as much as Aristotle feared it, and most believe that it is the most appropriate type of government for the United States. Americans' idea of **democracy** can best be summed up as a belief in government where authority is based on the consent and will of the majority. If they were asked the question "Who should govern?" a vast majority would state that the people should govern.

Republic A constitutional form of government in which decisions are made democratically by elected or appointed officials.

Nevertheless, the American concept of democracy does not mean a commitment to direct rule by the majority. As we will see, the framers of the Constitution did not believe that governmental authority should be directly in the hands of the people. They envisioned the United States as a **republic,** or

Representative democracy See republic.

representative democracy, in which the people govern indirectly by electing certain individuals—the president, members of Congress, governors, mayors, state legislators, and others—to make decisions on their behalf. Thus the people do not vote on or directly make specific policy decisions; they do so indirectly, through those they elect to represent their interests.

Despite this general acceptance of representative democracy, controversies still arise about the need for greater or lesser citizen participation in government decision making. Some argue that much more should be done to increase public input into policy decisions through procedures called **initiative and referendum.** Both involve placing questions of public policy on the ballot for voters to consider directly; however, the initiative process allows members of the general public to place such questions on the ballot, whereas it is the state or local legislative body that places a referendum on the ballot for public consideration.

Initiative and referendum Two means used to enhance the role of citizens by giving them a direct voice in making policy decisions.

Others believe that too much public input through direct participation can be damaging. Many local school districts, for example, have faced budgetary crises in recent years because local voters have constantly turned down requests to increase revenues.

Power. The question "Who should govern?" can also be approached from the perspective of politics. As defined above, politics involves activities intended to influence or control what goes on in government. Those who have the ability to wield such influence are said to possess **power.** From this perspective, the question about who governs should really be, "Who should wield power over the operations of government?"

Power The capacity and ability to influence the behavior and choices of others through the use of politically relevant resources. In the context of this book, it is the capacity and ability to wield influence over government.

What does it take to possess power? Reduced to its basics, power is a relationship between two parties, A and B. We say that A—let's call her Alice—has power relative to B—let's call him Bob—if Alice can influence Bob's choices or decisions. To do that, Alice should probably possess something that Bob finds desirable or irresistible. That something, called a resource, can be some special knowledge or expertise, a dynamic and winning personality, the promise of financial reward, or even an outright threat to do Bob harm if he does not cooperate. Just as important, Bob must find Alice's knowledge, rewards, or threat credible. If Bob, for instance, does not believe that Alice is an expert, then Alice will not have that form of influence over him.

From the perspective of power, the answer to the question "Who should govern?" rests on how dispersed the resources for wielding power are in a society. Those who believe in democracy want to see such resources distributed as widely as possible. For them, the ideal situation would be for each and every citizen to be able to exercise the same degree of influence over governmental actions. Under such conditions, government would do what the majority of citizens wanted done. This is called the **majoritarian view of power.**

Majoritarian view of power The view that political power should be distributed as equally as possible in a political system in order to facilitate meaningful majority rule.

But most students of government agree that politically influential resources are unequally distributed in society; consequently, some members of society will be able to influence governmental actions more than others. Thus the question really becomes whether it is more desirable to have those resources concentrated in the hands of a few ("elitism") or dispersed as widely as possible ("pluralism").

CLOSER TO HOME



Who Governs?

When you think about government, what comes to mind? If you are like most Americans, you probably think about Washington, D.C., the White House, and even the Supreme Court. This is understandable, since most of the political news we read or hear about is national. When Americans do notice their local or state government, it is typically because of some major crime or scandal. Rarely does the daily news of state and local government get the attention it merits.

How much attention do state and local governmental affairs deserve? When you consider the degree to which state and local governments affect our lives, it is clear that we should be paying a lot more attention to them. Indeed, in addition to the fifty state governments, there are over eighty-seven thousand local governments in the United States (see Chapter 3, on federalism). Everything from streets to schooling to water to trash collection comes from local government service providers. Highways, airports, and mass transit systems are usually operated and maintained by regional or state authorities. And to find such government services as law enforcement, public health inspections, and environmental protection, you again have to look closer to home.

Although this book focuses on the national government in almost all its chapters, we are including a Closer to Home feature in each chapter to highlight some aspect of state and local government that is relevant to the topic under discussion. While only touching the surface, it is intended to give you an appreciation of an extremely important part of the American political system that is too often ignored. We hope that this feature also whets your appetite to learn more about state and local governments.

Consider, for example, how the question "Who should govern?" is answered at the local government level. You will read in Chapter 2, on constitutional foundations, how that question is answered at the national level through the establishment of three distinct branches of government. For the most part, state governments also follow that model. At the local level, however, Americans have selected a wide range of responses to this question.

In small-town New England, for example, local governments rely on a very democratic form of governance called the town meeting. At least once a year, all the town's voting citizens gather to vote on local ordinances, tax levies, and the town budget. Having made those decisions, they elect town officials from among their number to carry out the town's business until the next meeting.

In contrast, some local governments are run by an executive director hired by a body of nonelected officials who owe their positions to a governor or an influential state legislator. This seemingly undemocratic answer to the question "Who should govern?" is not that uncommon. Numerous "special district" governments can be found throughout the United States—many providing public housing and others operating major bridges and tunnels (see Chapter 3, on federalism).

Between the extremes of town meetings and appointed special district government, different local communities have selected a broad range of answers to the "Who should govern?" question. In New York City, the government is in the hands of a strong mayor, who takes the lead in government policymaking and program management. In Dallas, Texas, however, the day-to-day tasks of governing are in the hands of an appointed city manager, who serves at the pleasure of an elected city commission.

Why is there such variation in local government structure? The answer lies in the fact that situations and traditions vary across the nation. Any attempt to make one size fit all will be doomed to failure. That is one of the reasons it is important for us to pay attention to what is going on in the governments closer to home.

Elitist view of power The view that political power should be in the hands of a relatively small part of the general population that shares a common understanding about the fundamental issues facing society and government.

Pluralist view of power The view that political power should be dispersed among many elites that share a common acceptance of the rules of the game.

Those who advocate the **elitist view of power** argue that the general public is best served when there is a basic consensus among a country's top leaders regarding fundamental issues. Although these leaders may disagree on minor issues or even compete against one another for positions of authority in government, the fact that they share a common view on issues that might otherwise split the nation is regarded as an important foundation for governing.

In contrast, while not denying that power-relevant resources are unequally distributed in society, those who support the **pluralist view of power** advocate a political system in which many elites, not just one, influence government. For pluralists, it is not important that members of some small elite agree on fundamental issues. Rather, it is crucial that membership in the elite be open to all in society and that they need only agree to abide by the rules of the game in government and politics. From the pluralist perspective, members of this open elite serve the public good by competing among themselves for the attention of government, as well as for control of public offices.

Whether focused on authority or power, the issue of who should govern is an important one. It helped to shape the American political system, and it remains a critical question in today's hotly contested political environment.

Where Should Governmental Authority Be Vested?

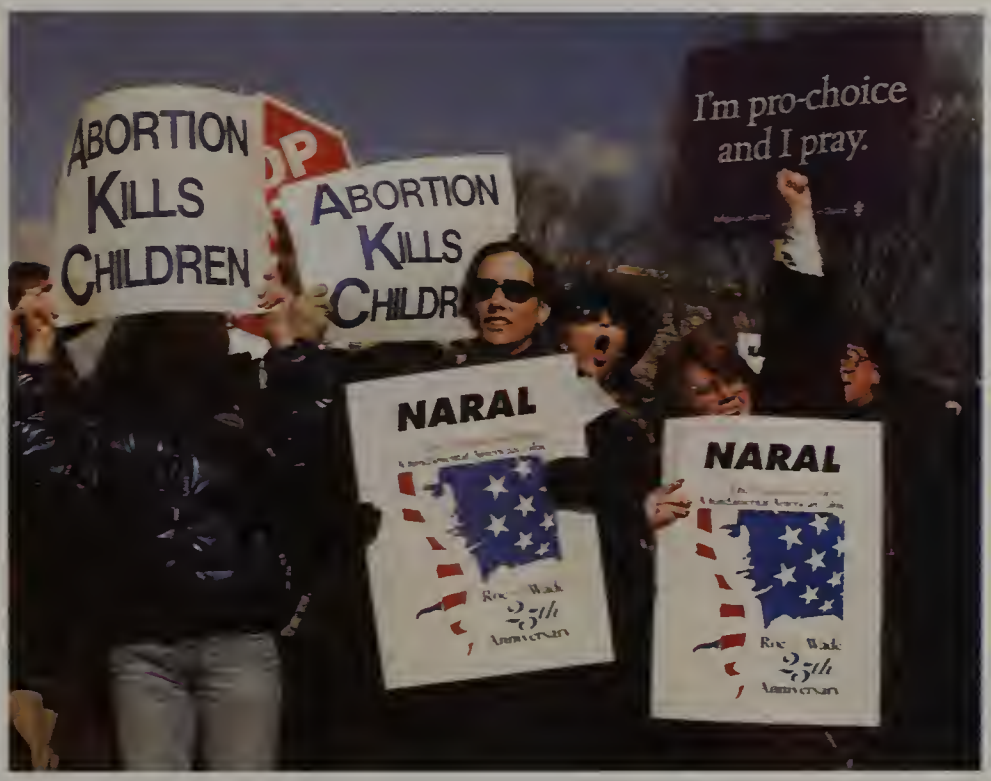
Should governmental authority be vested in local communities, in governments close to the people? Should it be vested in the political center of the nation, Washington, D.C.? Or should it be vested in the fifty state capitals—in Harrisburg, Springfield, Austin, Sacramento, Columbus, Tallahassee, and all the others? These questions do not have simple answers because of the broad range of governmental activities.

To illustrate, would it make sense for the national government to run your town's fire department? Who should be responsible for collecting garbage, running your town's parks, and hiring schoolteachers? Many people trust local government to deal with these important issues. There is no way, however, that towns and cities or even states can deal effectively with foreign policy, national defense, regional unemployment, and other major economic and social issues. Consequently, most Americans believe that the national government, with its vast economic resources and national perspective, should tackle these issues. Many also argue that national policies can better reflect the general will and values of the American people and are less likely to discriminate against racial, religious, and political minorities than local policies.

Most complex societies have found that to ensure effective governance, they need intermediate levels of government as well. Different nations have solved this problem in different ways. The United States has developed a unique solution that allows national, state, and local governments to share power. But even this solution is incomplete, and the debate continues over the role of each level

Government Affects Private Lives

A major issue dividing Americans along ideological lines is the degree to which government should intervene in the private lives of U.S. citizens. The debate over abortion rights is, in part, a reflection of differing ideological views on that issue.



of government in delivering services to the American public. We discuss the struggles over the vesting of power in greater detail in Chapter 3, on federalism and intergovernmental relations.

How Much Should Government Do?

What should be the scope of governmental activity? The answers to this question vary from society to society and from era to era. We can find a partial answer by examining the dominant ideologies of our nation. If myths help orient us toward our government by shaping our attitudes and understanding about what government does, ideologies provide us with the tenets for assessing the world of politics and the work of government. **Ideologies** are the *conceptual tools we use to think about whether government is doing what it ought to be doing.* They offer us general priorities and principles about what government could or should do and suggest the means for doing it.[25] Whereas myths help us understand and deal with the world, ideologies *reflect our beliefs about the way we think the political world does or ought to operate.*

Ideologies Conceptual tools used to help us think about whether government is doing what it ought to be doing. Ideologies offer us general priorities and principles about what government could or should do and suggest the means for doing it.

Although some governments have attempted to establish an official ideology, in most democratic nations there is competition among two or more dominant ideologies. Until the middle 1980s, the leaders of the Soviet Union endorsed and enforced a Marxist-Leninist ideology that made opposition to the

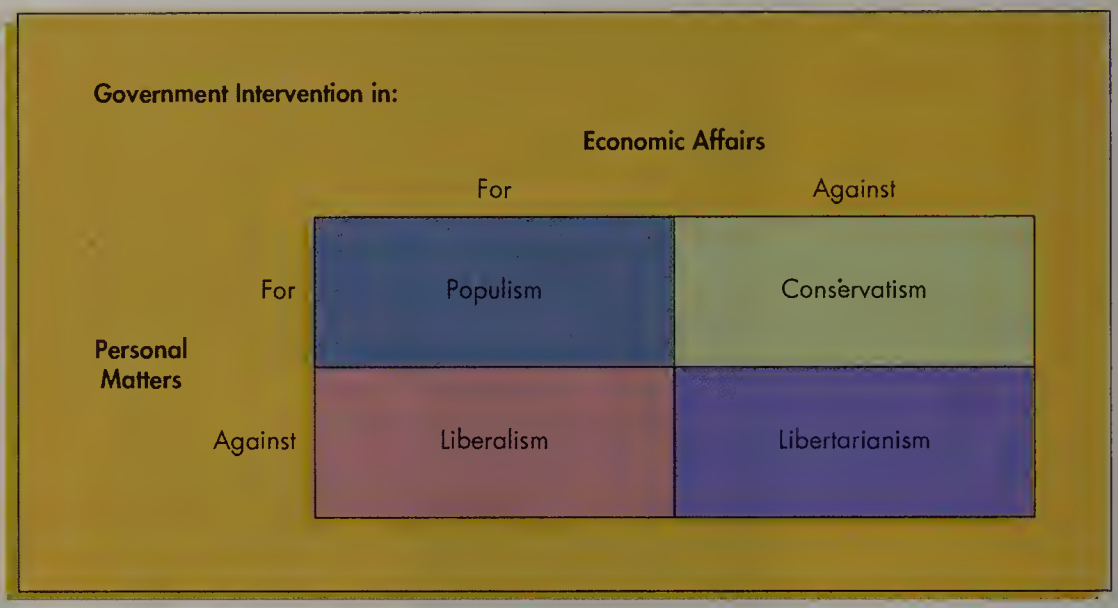


FIGURE 1.1

Issues and Ideologies

The four major ideologies of American politics have been shaped by debates over government's role in economic and personal matters.

Source: Adapted from William S. Maddox and Stuart A. Lilie, *Beyond Liberal and Conservative: Reassessing the Political Spectrum* (Washington, D.C.: The Cato Institute, 1984), p. 5. Reprinted by permission.

government a crime.[26] More common, however, is the situation in many Western European democracies, where competition among followers of different ideologies is at the heart of the representative system. In France, Italy, Belgium, Denmark, and even Great Britain, differences in ideology are often reflected in differences among the political parties.[27]

Although the American approach has been less overtly ideological, ideology does play an important—and increasingly controversial—part in shaping our political life. The American ideological landscape has been molded by two central questions regarding how much government should do. The first is how much government should intervene in economic affairs. For many Americans, government should not interfere in the marketplace unless absolutely necessary; for others, government regulation and management of the economy are crucial for the nation's health.

The second focuses on how much government should meddle in the private affairs of Americans. At one extreme are those who believe that government has no right to intrude in their personal choices and that the areas of personal freedom must be extended as much as possible. At the other end are those who believe that government sometimes has a moral obligation to intercede in the private lives of people who might otherwise make unwise decisions. From that perspective, governments should be permitted to make and enforce laws related to smoking, abortion, sexual activity, and so on.

Liberalism A set of ideological beliefs usually favoring government intervention in the economy, but tending to oppose government interference in the private lives of individuals.

Taken together, the intersection of American beliefs on these two issues has generated four ideologies that seem to represent four general answers to the question of how much government should be doing (see Figure 1.1).[28] **Liberal** is the label typically applied to those who favor increased government intervention in the economy but oppose increased limits on personal freedom. In contrast,

Conservatism A set of ideological beliefs tending to resist government interference in economic matters while favoring government action in private affairs for moral purposes.

Populism A set of ideological beliefs that tends to favor government intervention in both economic and personal affairs.

Libertarianism The ideological belief that government should do no more than what is minimally necessary in the areas of both economic affairs and personal freedom.

conservative is the label usually given to those who favor increased regulation of private lives for moral purposes but oppose government interference in the economy.

Traditionally, liberalism and conservativism have constituted the mainstream ideological positions of most Americans. But in recent years many Americans have found that their views do not fit neatly into either perspective: They are "liberal" on certain issues and "conservative" on others. As a result, two other popular ideological perspectives have emerged. Modern-day **populists** are inclined to favor government intervention in both economic and personal matters, whereas **libertarians** take a strong stand against both.

The growing popularity of the populist and libertarian ideologies reflects some fundamental problems and potential shifts in the American ideological landscape. Some observers of American government and politics have remarked that our dominant ideological perspectives, liberalism and conservatism, seem increasingly inconsequential to Americans. Some argue that there is a growing gap between the dominant ideologies and the realities of American political life. "The categories that have dominated our thinking for so long are irrelevant to the new world we face," contends E. J. Dionne, Jr.[29] Others see our contemporary problems as rooted in a widening "discrepancy" and tension between our dominant ideologies and the myths of American government that help define our expectations of how our political system should be operating.[30] In either case, ideological responses to questions about what government does are important to understanding American government.

Overview of This Book

American government and politics is a complex subject involving more than knowledge of the institutions and people who make our systems work. The choices made through the governmental and political systems are greater in number than the fundamental issues described above. Yet these institutions, people, and issues form the basics of what we must know in order to understand American government. As the political turmoil of recent years in Eastern Europe and the former Soviet Union has demonstrated, we must also understand and appreciate how myths operate in our own governmental and political systems. These are the objectives of the chapters that follow.

The first step in developing an understanding of American politics is to become informed about the major constitutional institutions and processes of government. Chapters 2 through 4 offer an overview of the historical and constitutional basis for the organization and functioning of the American governmental system. Chapter 2 focuses on the Constitution—its creation and its principal features. Chapter 3, on federalism and intergovernmental relations, considers the relationships among the various levels of government. Chapter 4 looks at some limits on governmental power: the civil liberties protected by the

Constitution and the civil rights guaranteed to citizens by the Constitution and by law.

The next five chapters consider the activities and institutions that link citizens to their government. In Chapter 5, we discuss the opinions that people have about government and how these opinions affect their participation in politics. Chapter 6 deals with the role of political parties, and Chapter 7 examines the most widespread forms of participation: nominations, campaigns, and elections. That discussion is followed by an analysis of two important institutions that influence the political system: interest groups, in Chapter 8, and the media, in Chapter 9. Interest groups shape politics by making it possible for people with similar goals to band together to influence public policy. The media have an impact on the way people perceive politics.

Chapters 10 through 13 examine the four central institutions of government: Congress, the presidency, the bureaucracy, and the courts. Finally, in Chapters 14 and 15, we probe the relationship between politics and policymaking in domestic and foreign policy.

In each chapter, we point out one or more myths associated with each topic. In some instances, as in Chapter 2, we focus on a myth (the "timeless and perfect Constitution") that distorts the truth but that has helped generate popular and consistent support for our governmental institutions. In other instances, we consider myths that seem closer to the truth but that have misrepresented the reality of American government. For example, in Chapter 10, on Congress, we tell you about the myth of congressional ineffectiveness, quoting one political commentator who suggested that it would take Congress thirty days to make a cup of instant coffee. Then we ask whether this myth misrepresents not only what Congress does but also what it is supposed to do. As we consider that myth and others, we show you the nuggets of truth that have given rise to them, as well as the ways in which they distort reality—sometimes for good, sometimes not. Only through an understanding of these and related myths can we comprehend the nature and work of our system of government.

We hope that you will find this approach stimulating and that it will provoke thought, discussion, and debate about your basic assumptions about government and politics. We also hope that our discussion will prompt you to ask additional questions about the dynamics of our exciting political process. Like the classic tales of the Greek gods, the myths of American politics reflect the rich imagination and the anxieties of those who created them.



Net Work

The growing popularity of the Internet has given students of American government access to information resources that used to be readily available only to experts. As a result, being able to *work the Net* in order to find that information is a critical part of your education. We have included this sec-

tion "Net Work" at the end of each chapter to guide you in your use of this incredible resource.

The best way for you to learn about the vast resources available on the Internet is to engage in your own explorations. Our purpose in the Net Work section is to give you some guidance to help you launch that exploration. That guidance takes several forms. In each chapter we highlight some of the more significant web sites relevant to the topics covered in that chapter. We also pose some questions and offer a challenging exercise that can help you to see what the Internet has to offer.

For instance, do you want to learn more about the problem of public distrust of government? See the "Partnership for Trust in Government" web site at **http://www.trustingov.org/.** But you might also want to find alternatives to that site; if so, you can turn to one of the many fine "search engines" provided for free on the Internet.

Search engines are on-line services capable of finding information on those parts of the Internet that they are programmed to scan. Some search engines cover as much of the Internet as they can (universal engines), while others are more specialized. One of the oldest and most established universal search engines is Alta Vista, found at **http://www.altavista.com/.** Other popular search engines are Yahoo! **(http://www.yahoo.com/),** Looksmart **(http://www.looksmart.com/),** Excite **(http://www.excite.com/),** Lycos **(http://www.lycos.com/),** the Go network **(http://go.com/),** and Northern Light **(http://www.northernlight.com/).** Universal search engines are also provided by some of the most popular Internet service providers (ISPs) such as America Online **(http://search.aol.com/)** and MSN **(http://search.msn.com/).**

Among specialized search engines, an important one for students of government is GovBot **(http://ciir2.cs.umass.edu/Govbot/),** which searches for information on government databases. Political Information.com **(http://www.politicalinformation.com/)** offers a search engine that focuses on more than 5,000 political and policy-relevant web sites. Those with more general interests can explore the net through the Social Science Information Gateway search engine **(http://sosig.esrc.bris.ac.uk/).**

Let's take some of these search engines for a spin. See if you can find the reality behind some of American's most venerable political myths on the Internet. What is the real story behind the Washington "cherry tree" myth? What about all those stories we were told about young Abe Lincoln? While one must always be cautious about giving too much weight to information drawn from the Web, you are likely to find some interesting "history" sites using one of the better search engines. For an example, see Plimoth-on-the-Web at **http://www.plimoth.org.** On political myths in general, see **http://ps.ucdavis.edu/classes/ire001/cult/myths.htm,** a site designed by students at UC-Davis.

Do you want to know more about the role of government in the U.S. economy? See "A Historical Perspective on the American Economy" from the USIA, at **http://www.usia.gov/usa/infousa/trade/ameconom/pt3.htm.**

CHAPTER 2

Constitutional Foundations

- The Setting for Constitutional Change
- The Framers
- The Roots of the Constitution

The British Constitutional Heritage: Charters, common law, and statutes
The Colonial Heritage: The beginnings of self-government
Intellectual Roots: Hobbes, Locke, and others
The Onset of Revolution: The Declaration of Independence

- What the Framers Did

Establishing Legitimacy: The authority to govern
Structuring Authority: Balancing national and state authority; structuring the national government
Distributing and Describing Governmental Powers: Powers in the federal system; powers in the national government
Limiting Governmental Powers: The Bill of Rights and other limits
Allowing for Change: The amendment process

- The Enduring Principles

The Rule of Law: Limiting the power of government
Republicanism: Avoiding the "mischiefs of faction"
Separation of Powers: Preventing dangerous efficiency
Checks and Balances: Sharing and restricting power; impeachment
National Supremacy: The authority of the whole

- Conclusion: Neither Timeless nor Irrelevant

MYTH & REALITY

Is the Constitution a perfect and timeless document?

MYTH & REALITY

Thomas Jefferson and James Madison—every schoolchild in the United States knows them as the third and fourth American presidents. They were also lifelong friends and close political allies who contributed a great deal to their country. Jefferson was the author of the Declaration of Independence, and Madison is known as the "Father of the Constitution" for the important role he played in shaping that document. Together they founded the country's first political party, and as presidents they led the young nation through difficult times.

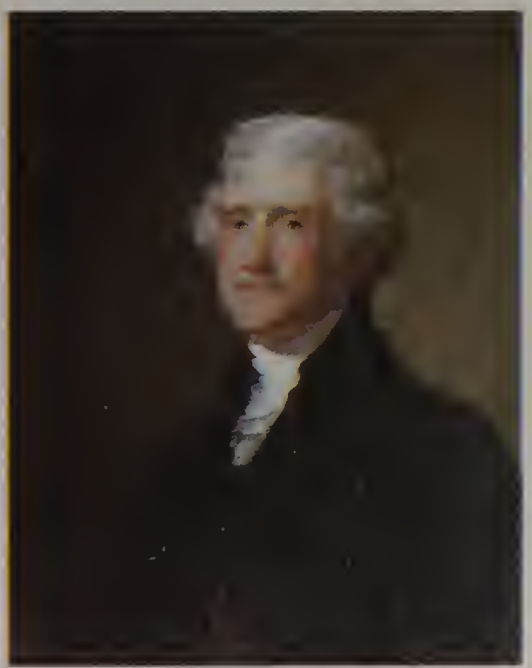
There was at least one issue, however, on which they differed: the need for constitutional stability. Madison thought the key to an effective government was for the people to develop a strong emotional attachment to its basic law—the constitution. As a result, he advocated using public events and patriotic celebrations to build long-term support for the U.S. Constitution.[1] In contrast, Jefferson regarded such "sanctimonious reverence" for the U.S. Constitution—or any other such document—with disdain. Instead, he favored major constitutional change every generation or so to refresh the public interest in government. "I hold it that a little rebellion now and then is a good thing, & as necessary in the political world as storms in the physical."[2]

The opposing views of those close friends have both found a home in the American political landscape. Thus, an astute foreign visitor to the United States is likely to be struck by contradictions in the attitudes of Americans toward their government. Most Americans, reflecting Madison's wish for public devotion to their constitutional system, believe that theirs is the best of all possible governments and would readily tout the American constitutional system as a model for modern democracy. However, especially in times of perceived crisis, the

James Madison & Thomas Jefferson

Despite their close friendship and shared views on politics, Jefferson and Madison disagreed about the need for radical constitutional change.





observant visitor is likely to hear many citizens call for major changes in a system of government they claim is too cumbersome and moves too slowly, if at all, and cannot meet the needs of our modern society.

A case in point emerged after the 1994 elections. Leaders of the victorious Republican party saw the overwhelming vote for their candidates in those elections as a mandate from the electorate to bring about what many of them called a "revolutionary" shift in the size and direction of American government. High on the list of priorities for the newly elected Republican majority in Congress were proposals to add to the Constitution of the United States amendments requiring balanced budgets and congressional term limits. The Republicans were also committed to passing legislation that would make it more difficult for Congress to raise taxes (by requiring a three-fifths majority vote on such issues) and easier for a president to control excessive or frivolous congressional spending (by giving the president a line-item veto over congressional spending legislation). If adopted, these proposals would have had a significant and fundamental impact on the way American government operates.

Despite this push to radically transform the basic institutions of government, *none of the supporters of these changes felt that they were fundamentally altering the basic nature of the Constitution.* Rather, they saw the changes as a means for restoring the promise and premise of America's Constitution. "The [U.S.] Capitol once stood as a shining example for the entire world of free people governing themselves," noted a highly partisan document released by the Republican leadership after the election.

> Republicans want to return that trust to the American people. For more than forty years, the Democrats ran Congress with an iron fist, *ruining the tradition and trust created by our Founding Fathers.* Republicans have taken this responsibility seriously, and want to prove to the American people that our system of government can work as intended, with free people responsibly governing themselves (italic emphasis added).[3]

To understand this apparent contradiction, one must consider the influence of one of the most fundamental myths of American government: the *myth of the timeless and perfect Constitution.* It is a myth so deeply ingrained in the American view of government that it influences the attitudes of those who seek fundamental change as well as those who want to maintain the system as it is. Holders of that myth regard the U.S. Constitution as an almost sacred blueprint for an ageless and nearly flawless "machine that would go of itself"—a device so wisely crafted that it has needed only occasional adjustment during its more than two hundred years of constant operation. Yes, that constitutional blueprint has been modified through the amendment process twenty-seven times. But to those who adhere to the myth of the timeless and perfect Constitution—whether they advocate change or not—the framers' magnificent creation continues to provide the basic machinery and principles of government.[4]

The power of that myth can be seen throughout the nation's history. In 1791, just two years after the U.S. Constitution was ratified and began operating,

a senator commented that one would think that "neither Wood grew nor Water run in America, before the late happy Adoption of the New Constitution."[5] In 1861, leaders of the seceding Confederate States of America adopted the text of the 1787 Constitution and its amendments as their own, making only minor corrections for style. Thus, the confederate president, Jefferson Davis, was able to proclaim that, in fact, it was the "rebels" of the South who "were upholding the true doctrines of the Federal Constitution."[6]

In this chapter we will look closely at the U.S. Constitution and attempt to penetrate the myth of the timeless and perfect Constitution. We will look at the political and intellectual conditions that influenced the framers of the Constitution in order to understand the political world from their perspective. Then we will describe the document itself, and how it has changed over the past two centuries. Finally, we will pay special attention to the enduring principles of government found in the Constitution and consider the central role these play in sustaining the myth of the timeless and perfect Constitution.

The Setting for Constitutional Change

Why do people develop constitutions? The obvious and simple answer is that when two or more people work together to resolve common problems, they eventually must organize and establish rules under which to operate. At a minimum, constitutional structures and procedures help sustain collective efforts and prevent the deterioration of social relationships into violent clashes over who is in charge and how things get done.

For the framers of the U.S. Constitution, that question is not so clearly or simply answered. For one thing, when they met in Philadelphia in May 1787, there was already a constitution in place.

Articles of Confederation The United States' first constitution, ratified in 1781. They established a loose union of states and a congress with few powers.

The **Articles of Confederation** were written in 1777 and ratified in 1781 as America's first constitution. They established a loose union of states (a "firm league of friendship") and a relatively weak national congress. The national congress consisted of a single body in which each state had one vote. That body could exercise significant powers if it could muster the nine-thirteenths majority it took to pass any major legislation. For instance, under the Articles, the congress was empowered to make war and peace, send and receive foreign ambassadors, borrow money and establish a monetary system, build a navy and develop an army in cooperation with the states, fix uniform standards of weights and measures, and even settle disputes among the states. However, it was powerless to levy and collect taxes or duties, and it could not regulate foreign or interstate commerce. There was no executive to enforce acts of the congress and no national court system. As for amending the Articles themselves, it took a unanimous vote of the member states to make such fundamental changes in the national government.

The meeting at Philadelphia was convened because many of the country's political leaders saw that the national government under the Articles lacked the strength to cope with the young republic's problems. For example, by 1787 it was clear to many officials that the national government under the Articles could not conduct an effective foreign policy. Despite the colonists' victory in the American Revolution, the British had not relinquished the Northwest Territories along the Great Lakes. Furthermore, the Spanish remained a hostile presence in Florida and what was then the Southwest. Encouraged by both Britain and Spain, Native American tribes harassed Americans all along the new nation's frontier.

The national government was just as ineffective within its borders. One group of North Carolinians declared an independent "State of Franklin" in 1784 and actively sought annexation by the Spanish; and while New York and New Hampshire argued over claims to the territory of Vermont, residents of that area attempted to have themselves annexed by the British as part of Canada.[7]

Even worse was the Confederation's inability to deal with the nation's financial problems. Lacking the power to tax, the national congress had to rely on funds provided by the states. Its requests for funds from the states were increasingly ignored. The country had accumulated a large public debt during the Revolutionary War, and much of it remained unpaid. When some states began to print worthless paper money to pay off their debts, spiraling inflation hit the economy.

Economic conditions under the Articles were not good. Within the states, many small farmers faced bankruptcy and the loss of their farms. In western Massachusetts, where the situation was particularly bad, a group of farmers led by a former Revolutionary War officer, Daniel Shays, disrupted court foreclosure proceedings in September 1786 and several months later tried unsuccessfully to seize a national government arsenal. That incident, known as *Shays's Rebellion*, convinced some of the country's most politically influential leaders that changes had to be made in America's system of government.[8] Several of those leaders were no doubt motivated by a genuine concern for the future of the young republic. Others, however, were stirred to action by fear and anxiety about their own economic future unless something was done—and sooner, rather than later.

The Framers

Who were those leaders? What do we know about them? The fifty-five who came to Philadelphia in 1787 were all white males. Women and African Americans, as well as other racial minorities, were excluded from this momentous gathering. Although we frequently honor these men as the nation's "Founding Fathers," most of their names are unfamiliar to us. Among them were merchants, physicians, bankers, planters, and soldiers. Their average age was forty-three; the youngest was Jonathan Dayton of New Jersey at twenty-six, and the oldest was Benjamin Franklin at eighty-one. More than half were trained in the law, and

more than two-thirds had served in the Continental Congress, which had governed the new nation during the Revolutionary War. At least twelve were receiving a major portion of their income from public office at the time the Philadelphia convention assembled. That summer they took part in a rare moment of "decisive political creation": They applied their knowledge and experience of government to the design of a new constitution.[9]

According to observers at the time, the delegates included some rather interesting personalities. Gouverneur Morris, a delegate from Pennsylvania, played a major role in drafting the Constitution. A member of a well-known family who had lost a leg in a childhood accident, Morris had been active in New York State politics before relocating to Philadelphia. A contemporary noted that he possessed "one of the best organized heads on the continent, but without manners, and, if his enemies are to be believed, without principles." Hugh Williamson, a delegate from North Carolina, was a Pennsylvania-born physician, preacher, mathematician, astronomer, and businessman. A "leading light" at the convention, Williamson was regarded as "extremely bizarre, loving to hold forth, but speaking with spirit." And Nicholas Gilman, a bachelor delegate from New Hampshire who played a relatively minor role in the proceedings, was characterized as a "pretentious young man; little loved by his colleagues."[10]

Mostly well educated and wealthy, the delegates included at least two men of international reputation: George Washington and Benjamin Franklin. A popular and imposing figure, Washington was unanimously elected to chair the meeting. A tight-lipped person, the fifty-five-year-old general contributed little to the convention's debates but could enforce its strict rules because the delegates feared his anger.

Benjamin Franklin was well regarded by the other delegates, and many constantly sought his opinions. At eighty-one years of age, his physical powers were

Constitutional Convention

The Constitution was shaped by several compromises reached through the debates at the 1787 convention.



failing him. He was so ill at times that prisoners from the city jail were assigned the task of carrying him from his home to the nearby sessions in a specially designed sedan chair. Despite being well prepared for the meetings, he was not always attentive during the convention's debates and rarely spoke. Nevertheless, he was influential in the eventual adoption of the document. During the final days of the convention, he expressed his support by noting that whenever a group of men are gathered to write a constitution, "you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views." One can hardly expect, he argued, that any such gathering would produce a "perfect" government. "It therefore astonishes me," he continued, "to find this system approaching so near to perfection as it does. . . . Thus I consent . . . to this Constitution, because I expect no better, and because I am not sure that it is not the best."[11]

The Roots of the Constitution

From a historical perspective, Franklin's astonishment is itself surprising, for the framers of the Constitution were hardly as diverse in their "prejudices" and "passions" as he thought. Despite many disagreements and debates over specifics, the framers shared a common legal and intellectual heritage. In that sense, the roots of the Constitution run deep. To understand the unique circumstances that led to its creation, we must explore the traditions that guided its authors.[12]

The British Constitutional Heritage

Feudalism A medieval political and economic system in which landless families secured protection and the use of farmland in exchange for providing services and resources to the land's owner.

Charter A British legal institution that originated during the Middle Ages and formed part of the British constitution. Specifically, a formal agreement that describes the rights and duties of both the landowner and those bound to that person.

With few exceptions, the leaders of the American Revolution respected the British constitutional system. Indeed, many of them saw the Revolution as a fight to secure the rights they had assumed to be theirs as Englishmen.[13] Therefore, when the time came for them to devise their own system of government, the framers relied heavily on the British constitutional tradition.[14]

What was that tradition? The question is not easy to answer. The British constitution was not then—and is not now—found in any single document. Rather, it is made up of three British legal institutions with deep historical roots: charters, common law, and several major statutes.

Charters. During the Middle Ages, **feudalism** dominated European society: It involved social, political, and economic arrangements through which landless families secured farmland and protection in exchange for providing services and resources to the land's owner. These arrangements were sometimes written down in agreements called charters. A **charter** described the rights and duties of both the landowner and those bound to him. It was usually drawn up to settle or avoid disputes in the feudal relationship.

In 1215 such a disagreement about the rights of those who served under the British Crown caused a major conflict between King John and the English nobility. After losing on the battlefield, John signed the **Magna Carta,** a document that reaffirmed long-standing rights and duties of the nobility and defined the limits placed on the king. That charter stands for the principle that everyone, including the king, must obey the law. Over the centuries it became an almost sacred guarantee of law and justice for citizens of the United States as well as England.[15]

Magna Carta A document signed by King John in 1215 that reaffirmed the long-standing rights and duties of the English nobility and defined the limits placed on the king. It stands for the principle that government is limited and that everyone, including the king, must obey the law.

Common Law. During medieval times, monarchs, not legislatures, made laws. A king or queen would proclaim something to be the law of the land, sometimes (but not always) after seeking the advice of a legislative body. Legislatures did not become a major source of laws in England until the 1600s. In the meantime, a large gap remained between the broad coverage of most royal proclamations and the details of legal disputes.

Into that legal breach stepped judges appointed by the British Crown to settle such disputes, and from their work came common law. **Common law,** also called judge-made law, represents the collection of legal doctrines that grew out of the many cases heard by those judges. Over an extended period of time, some of those doctrines developed into basic principles of law that were applied throughout England and its expanding colonial empire.

Common law The collection of legal doctrines that grew out of the many cases heard, beginning in medieval times, by judges appointed by the British Crown; also called judge-made law. It is part of the British constitution.

When the British Parliament eventually began to pass laws, conflicts arose between its statutes and the common law being applied by the British courts. These conflicts emerged, in part, because many English judges and lawyers believed that common-law principles represented a set of "immutable and eternal" rules against which Parliament's actions should be measured.[16] The conflicts came to a head in 1610, when an English court held that an act of Parliament could be overturned if a judge determined that the law violated the basic tenets of common law.

Even though legal reforms have reduced the high status of common-law rules in both England and the United States, that tradition contributed two important constitutional principles. First, it established the idea that there was a higher law against which legislative actions should be measured. In the United States, the Constitution itself became that higher standard.[17] Second, this common-law tradition provided a basis for the power of courts to apply those standards and to nullify statutes and government actions that they judged to be in violation of a higher-law standard. That became the foundation of judicial review, which is a key ingredient in the operations of the American constitutional system.[18] (See the discussion of checks and balances later in this chapter.)

Major Statutes. Several major acts of Parliament also shaped the British constitutional tradition. The British Bill of Rights (1689), for instance, established some basic principles of constitutional government: Parliament's supremacy over the monarchy, the guarantee of a jury trial, and prohibitions against excessive bail and cruel and unusual punishment. Other laws asserted the independence

of the judicial branch from the monarchy (Act of Settlement, 1701) and the right of representation in determining taxes (Petition of Right, 1629)—an issue that would be central to the complaints of the North American colonists.

The Colonial Heritage

Mayflower Compact A document written by the Pilgrims setting forth major principles for the Plymouth Colony's government.

Most British colonies were established under royal charters that allowed settlers to govern themselves in many matters. In several colonies, the settlers modified or supplemented these agreements. For example, the **Mayflower Compact,** written by the Pilgrims, set forth several major principles for the Plymouth Colony's government. That agreement and similar ones found throughout the colonies became part of the colonial heritage that helped shape the Constitution.[19]

When we think about colonial rule, we often picture an oppressed people dominated by foreign rulers. We rarely think of colonial government as a breeding ground for self-government and openness. Yet from the 1630s until the American Revolution, England let its North American colonies govern themselves, making no major effort to establish a central administration for its growing empire.[20]

Each of the colonies remained primarily a self-governing entity, and by the early 1700s most had developed similar governmental structures. A typical colony had three branches of government: a governor appointed by the king, a legislature, and a relatively independent judiciary. Local government consisted of self-governing townships and counties. The future leaders of the American Revolution gained political experience and an understanding of how governments operate through participation in these colonial institutions.[21]

CRITICAL THINKING

Was the American Revolution inevitable? What would have happened if the British had treated their North American colonies better?

Intellectual Roots

The intellectual atmosphere of the time also influenced the framers of the Constitution. Raised in a society that took its religion seriously, they grew up with such concepts as equality before God and the integrity of each human life—concepts rooted in their *Judeo-Christian religious traditions.*[22] The idea of a covenant, or contract, among members of society developed from those traditions, as did the distrust of the monarchy and the perception of a need for a system of laws to protect individual rights.

Enlightenment The period from the 1600s through the 1700s in European intellectual history. It was dominated by the idea that human reason, not religious tradition, was the primary source of knowledge and wisdom.

The framers were also children of the **Enlightenment.** Usually dated from the 1600s through the 1700s, that period in European intellectual history was dominated by the idea that human reason, not religious tradition, was the primary source of knowledge and wisdom. On issues related to government and politics, a number of writers set the tone for the discussions among the framers and their peers in the colonies.

Among the most controversial Enlightenment writers was Thomas Hobbes. Writing in the middle 1600s, Hobbes argued that governments were not formed

because God had conferred political authority on a specific ruling family. In his most famous work, *Leviathan* (1651), Hobbes contended that governments were formed by an agreement among rational individuals who, living without government in a brutish state of nature, realized it was in their self-interest to subject themselves to an all-powerful ruler. Thus, Hobbes argued that government depended on the consent of the governed. Although he was no advocate of democracy (he wrote in defense of the British monarchy), his views proved helpful in establishing the rational basis of government.[23]

Another British political philosopher, John Locke, was perhaps the most influential of the Enlightenment authors among the colonists. He offered an explanation of political life that carried Hobbes's argument further by asserting that people possess an inherent right to revolution. In *Two Treatises on Government* (1690), Locke argued that individuals form governments as a matter of convenience to deal with the depraved behavior of some individuals. Thus, any government can continue to exist as long as it proves convenient to its citizens and does not interfere with their pursuit of life, liberty, and property. But if the government violates this arrangement, then the citizens have a right to emigrate or resist. Ultimately, this view sanctions the right of citizens to replace that government with another.[24]

The work of a French aristocrat, Charles de Montesquieu, clearly influenced those who wrote the Constitution. The framers relied especially on his book *The Spirit of the Laws,* which was first published in Paris in 1748. In that work, Montesquieu argued that the best government is one that is designed in such a way that no person or group can oppress others. This end is best achieved, Montesquieu wrote, by separating the legislative, executive, and judicial functions into three distinct branches of government.[25]

Finally, just as the seeds of the American Revolution were being planted in the 1750s and 1760s, a Swiss-born philosopher, Jean-Jacques Rousseau, published several works arguing for a more extreme version of popular sovereignty than that offered by Locke. According to Rousseau, the best form of government is one that reflects the general will of the people, or **popular sovereignty,** which is the sum total of the interests that all citizens have in common. Rousseau's major writings influenced the French Revolution of 1789 much more than the American Revolution, and most of the framers probably regarded him as too radical. Nevertheless, he was read widely and had many followers in the American colonies. Among them was Thomas Paine, a British-born American revolutionary whose pamphlets had a great influence during the American Revolution. His best-known work, *Common Sense* (1776), is among the most often cited of the writings that came out of the American Revolution.

Popular sovereignty
The concept, first described by writer Jean-Jacques Rousseau around the time of the American Revolution, that the best form of government is one that reflects the general will of the people, which is the sum total of those interests that all citizens have in common.

The Onset of Revolution

In the 1760s, British policies toward the North American colonies changed. After nearly 150 years of relative freedom from direct interference from England, the

colonists found themselves under increasing pressure from London. Britain needed men and resources to fight the French and so began to impose demands and commercial restrictions on the American colonists. Given their legal, political, and intellectual heritage, it is not surprising that some colonists responded with calls for revolutionary action.

In 1765 the British passed the *Stamp Act*—the first tax levied directly on the colonists by Parliament. Relying on their view of the rights granted all British subjects under English law, colonial leaders protested against this "taxation without representation." The Stamp Act was repealed within a few months, but other controversies soon arose. For instance, the British granted a monopoly on the sale of tea to a British firm, thus interfering with the interests of many colonial merchants. In 1773 a group of Boston citizens responded by raiding a ship loaded with tea and dumping its contents overboard. That incident, now known as the *Boston Tea Party*, caused the British to close Boston Harbor and tighten control over the colonial government in Massachusetts. The events leading to rebellion soon escalated, and by 1774 even some of the moderate voices in colonial politics were calling for change.

Representatives from the colonies gathered as the First Continental Congress in Philadelphia in September 1774. After passing resolutions protesting the recent British actions, the delegates set a date for reconvening the next year and adjourned. By the time they met again as the Second Continental Congress in May 1775, colonists and British troops had exchanged gunfire at Concord and Lexington.

The Second Continental Congress took a number of steps that officially launched the American Revolution. It organized itself as a provisional government, and in June 1775 it created a continental army, to be headed by George Washington. In May 1776, the congress voted to take the final step of drawing up a statement declaring the colonies free and independent states. On July 2, 1776, it adopted the **Declaration of Independence.** Two days later, independence was formally declared.

Declaration of Independence The document declaring the colonies to be free and independent states and also articulating the fundamental principles under which the new nation would be governed that was adopted by the Second Continental Congress in July 1776.

The Declaration of Independence achieved several objectives. It denounced the British for abusing the rights given the colonists under the British constitution and long-standing traditions of self-government. It proclaimed the intention of the colonial revolutionaries to sever their ties with England and explained the reasons for such drastic action. Most important, it articulated two fundamental principles under which the newly formed nation would be governed. First, the Declaration held that governments have one primary purpose: to secure the "unalienable rights" of their citizens, among which are "life, liberty, and the pursuit of happiness." Second, it stated that governments derive their powers and authority from the "consent of the governed." The signers of the Declaration asserted that when any government violates the rights it was established to secure, "it is the Right of the People to alter or to abolish it" and to create a new government in its place.[26]

What the Framers Did

As noted before, the "new government" created in the immediate aftermath of the American Revolution—the Articles of Confederation—had developed some significant flaws by 1787, leading to the Philadelphia meeting. Although originally charged with just recommending changes to the Articles, the delegates soon assumed the broader task of constructing an entirely new set of institutions and rules.

The framers designed a system of government that met several of the basic requirements of any constitution. To shape a viable national government, they needed to establish its legitimacy and work out its basic structures. Through the Constitution, they created the three branches of government and defined and limited their powers. They also devised formal procedures by which the Constitution itself could be amended.

Establishing Legitimacy

A government cannot be effective unless it possesses power—that is, unless it has the ability to carry out its policies and enforce its laws. Even more important, its citizens must believe that the government has the ability to exercise authority and power (see the discussion in Chapter 1). How many Americans would voluntarily file their federal income taxes with the Internal Revenue Service by April 15 each year if they thought the government could not collect those revenues? How many car manufacturers would include pollution-reducing devices in their vehicles if they believed the government could not enforce its environmental protection laws?

Legitimacy The belief of citizens in a government's right to pass and enforce laws.

The power and authority of any government are enhanced by the willingness of its citizens to obey government officials. A government is most effective when its citizens believe that those officials have a right to pass and enforce laws. That is why the establishment of government **legitimacy** is so important. It provides government with the effective authority it needs if it is to govern.

CRITICAL THINKING

What are the alternatives to legitimacy? How does a government get people to obey the law without legitimacy?

The legitimacy of the U.S. government is rooted in the Preamble to the Constitution. In a few words at the beginning of the Preamble, the framers make clear the source of authority for the republic: "We the People." The choice of words is important. The government created under the Articles of Confederation in 1777 was called a "firm league of friendship" among the states. Ultimately, all authority was retained by the states. The Constitution, in contrast, leaves no doubt that the national government's right to exercise authority—its legitimacy—comes directly from the people and not from the states (see Table 2.1).[27]

Structuring Authority

In deciding how to structure the authority of the new government, the framers of the Constitution faced two challenges. First, they had to create a stronger

TABLE 2.1
Comparing America's Two Constitutions

	Articles of Confederation	Constitution of the United States
Establishing legitimacy	Through a "firm league of friendship" among the states	Through "We the People"—all citizens of the nation
Structuring authority	Through a confederacy, with ultimate authority residing in the states	Through a federal arrangement, with national and state governments dividing and sharing authority
	Within the national government, in a single body—the congress	In three distinct branches of government: legislative, executive, judicial
Describing and distributing powers	Number of foreign and domestic powers listed in Article IX, many limited so as not to interfere with state authority	Delegated and implied powers for national government in Article I
		Concurrent and reserved powers for states
Limiting powers	Many limitations on national powers, with deference to states	Provision in Article I Bill of Rights
Allowing for change	Amendments require unanimous vote of states	Elaborate amendment process requiring significant majorities rather than unanimity
	No national courts to interpret meaning of Articles	Judicial review implied

Confederation An arrangement in which ultimate government authority is vested in the states that make up the union, with whatever power the national government has being derived from the states' willingness to give up some of their authority to a central government.

Unitary system A form of government in which the ultimate authority rests with the national government, with whatever powers state or local governments have being derived from the central government.

national government while allowing the states to retain their authority. Second, they had to deal with the issue of how to allocate authority within the national government itself.

Balancing National and State Authority. The framers knew that they had to create a stronger national government in order to contend with the problems plaguing the country under the Articles of Confederation. At the same time, they needed to make certain that their new constitution did not threaten the traditional authority of the thirteen states.

Under the Articles, ultimate governmental authority rested with the states that constituted the union. Whatever power the national government had was derived from the states' willingness to give up some of their authority to a central government. Such an arrangement is called a **confederation;** hence the title of the Articles.

In considering alternatives, the framers could have proposed a constitution based on a **unitary system** of government. In a unitary government, the ultimate authority rests with the national government, and whatever powers state or local

governments have are derived from the central government. The framers would not have had to look far for examples, as each of the thirteen states was in fact a unitary government. Although each state contained towns, counties, and boroughs, those local governments exercised only such powers as were granted to them by a charter issued by the state government.

While they sought to move toward a stronger national government, the framers realized that their new constitution would not be ratified if it included a unitary form of government. In the end, they created a hybrid—a mixture of confederation and unitary system that is now called a **federation.** In a federation, the authority of government is shared by both the national and the state governments. In its ideal form, a federal constitution gives exclusive authority over some governmental tasks to the national government, while giving the states exclusive authority over other governmental matters. There are also some areas where the two levels of government share authority. Which areas of government were distributed to the national government and which to the states is discussed below.

Federation (federal system) A mixture of confederation and unitary system in which the authority of government is shared by both the national and state governments. In its ideal form, a federal constitution gives exclusive authority over some governmental tasks to the national government, while giving the states exclusive authority over other governmental matters; there are also some areas where the two levels of government share authority.

Structuring Authority Within the National Government. Having established a national government with authority, the framers also had to develop structures of authority within the national government so that it could exercise its powers. Under the Articles of Confederation, whatever powers the national government possessed were exercised by a single body: the congress. In contrast, and following the model elaborated by Montesquieu in his *Spirit of the Laws,* the framers created three branches of government: Congress, the presidency, and the courts. They did so in the first three articles of the Constitution, which define these primary structures of government and outline the roles, powers, and responsibilities of the public officials in each one.

The basic structure of American government emerged from a series of compromises reached among the delegates to the Constitutional Convention. When the convention opened, the delegation from Virginia offered a series of resolutions for the meeting to consider. Under the *Virginia Plan,* there would be a **bicameral** (two-house) congress in which each state's representation would be based on its population relative to that of other states. Under the Articles of Confederation, a state could send several representatives to the congress, but each state had only a single vote. The Articles of Confederation also did not provide for separate executive or judicial branches of government at the national level; the Virginia Plan called for both.

Bicameral Refers to a legislature that is divided into two separate houses, such as the U.S. Congress.

Delegates from states with larger populations welcomed the Virginia Plan's provisions. But after lengthy debate, some delegates from the smaller states put forward a counterproposal. Known as the *New Jersey Plan,* it called for strengthening the existing Articles by adding executive and judicial offices. It also increased the powers of the Articles' **unicameral** (one-house) congress, especially its ability to force reluctant states to cooperate with the national government.

Unicameral Refers to a legislature that has only one house.

The delegates voted to reject the New Jersey Plan. However, the discussions about it drew attention to the many delegates who remained uncomfortable with key provisions of the Virginia Plan, especially on the question of representation.

Great Compromise
The proposal offered by the Connecticut delegation to the Constitutional Convention in 1787. It called for establishment of a bicameral congress, consisting of a House in which states were represented according to their population size and a Senate in which each state had an equal voice.

To avoid a stalemate, the delegates adopted what has become known as the **Great Compromise.** That proposal, offered by the Connecticut delegation, led to acceptance of the structure of the American national government as we know it today. It called for the establishment of a bicameral congress consisting of a House of Representatives in which states would be represented according to their population size, and a Senate in which each state would have an equal voice. Article I of the Constitution outlined the composition of Congress and described the rules and restrictions that apply to both legislative bodies.

Furthermore, the Great Compromise contained provisions for executive and judicial branches of government. Article II of the Constitution established the executive offices of president and vice president and specified the qualifications for these offices. It also detailed the method for selecting those officials, but those provisions have since been changed by the Twelfth Amendment. Later sections of Article II described the president's general responsibilities and provided guidelines for relations with Congress. Article III created a judicial branch of government that is composed of "one supreme Court, and . . . such inferior Courts as the Congress may from time to time ordain and establish."

The Great Compromise was just one of many agreements among the framers to resolve the complex issues they faced (see Table 2.2). Out of such

TABLE 2.2
The Major Compromises

Demands	Compromises	Demands
	Great Compromise	
States to have equal representation in Congress (New Jersey Plan)	Bicameral Congress with equal representation in Senate and population-based representation in House	States to be represented in Congress on the basis of population (Virginia Plan)
	3/5ths Compromise	
Slaves to be counted for representation purposes, but not for taxation purposes	All slaves to be counted as 3/5ths of a person for both representation and taxation purposes	Slaves not to be counted for representation purposes, but to be counted for taxation purposes
	Commerce/Slave Trade Compromise	
National government not to regulate slave trade or exports	Congress given power to regulate interstate and foreign commerce but not to impose tax on exports from any state; Congress not to act on slave trade until 1808	National government to have authority over all interstate and foreign trade
	Federalism	
States to retain their legitimate authority in the government system	Division of legitimate authority between states and national government	An effective national government to be established

compromises came major provisions of the Constitution. Most important, each compromise made it possible for the framers to complete their work and create a document that had some hope of ratification.

Distributing and Describing Governmental Powers

Having established a two-level structure of authority in the federal system, and having created the three branches within the national government, the framers next faced the task of dividing up the powers among the various institutions.

Delegated powers The powers the Constitution gives the Congress that are specifically listed in the first seventeen clauses in Section 8 of Article I; sometimes referred to as "enumerated powers."

Concurrent powers Those powers the Constitution grants to the national government but does not deny to the states, for example, to lay and collect taxes.

Necessary and proper clause The eighteenth clause of Article I, Section 8, of the Constitution, which establishes "implied powers" for Congress that go beyond those listed in the Constitution.

Implied powers Those powers given to Congress by Article I, Section 8, clause 18, of the Constitution that are not specifically named but are provided for by the necessary and proper clause.

Powers in the Federal System. The history and present-day operations of the federal system designed by the framers will be discussed in greater detail in Chapter 3, which focuses on federalism and intergovernmental relations. It is important at this juncture to understand how the framers allocated governmental authority between the national government and the states.

The powers given to Congress in Article I are central to the operations of the national government. The article includes a detailed list of these powers, such as the authority to tax, borrow money, regulate interstate commerce, coin money, declare war, and raise and support an army and navy. These and other powers identified in Section 8 of Article I constitute the **delegated powers** of American national government (see Figure 2.1). Many of these—such as the power to coin money, make treaties, and lay import duties—are granted exclusively to the national government; that is, they are denied to the states. Other delegated powers, however, are granted to the national government but not denied to the states—for example, the power to lay and collect taxes and the power to define criminal behavior and set punishments. These are called **concurrent powers.**

Article I, Section 8, of the Constitution also provides Congress with the authority "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States." This **necessary and proper clause,** found in paragraph 18 of Section 8, establishes **implied powers** for Congress that go beyond those listed elsewhere in the Constitution. The U.S. Supreme Court, in *McCulloch* v. *Maryland* (1819), resolved the constitutionality of implied powers.

In that case, the Court considered whether Congress had the right to charter a Bank of the United States. The national bank was a controversial institution from the moment it was created by the first Congress, especially in the South and West, where bank policies were blamed for the nation's economic woes. Several states decided to challenge the constitutionality of the bank by imposing a tax on its local branches. When Maryland officials assessed a tax of $15,000 on the bank's Baltimore branch, the head cashier took state officials to court, charging that they did not have the authority to tax an agency of the national government. Maryland countered that the Bank of the United States was not a legally constituted agency of the federal government because no provision in the Constitution explicitly

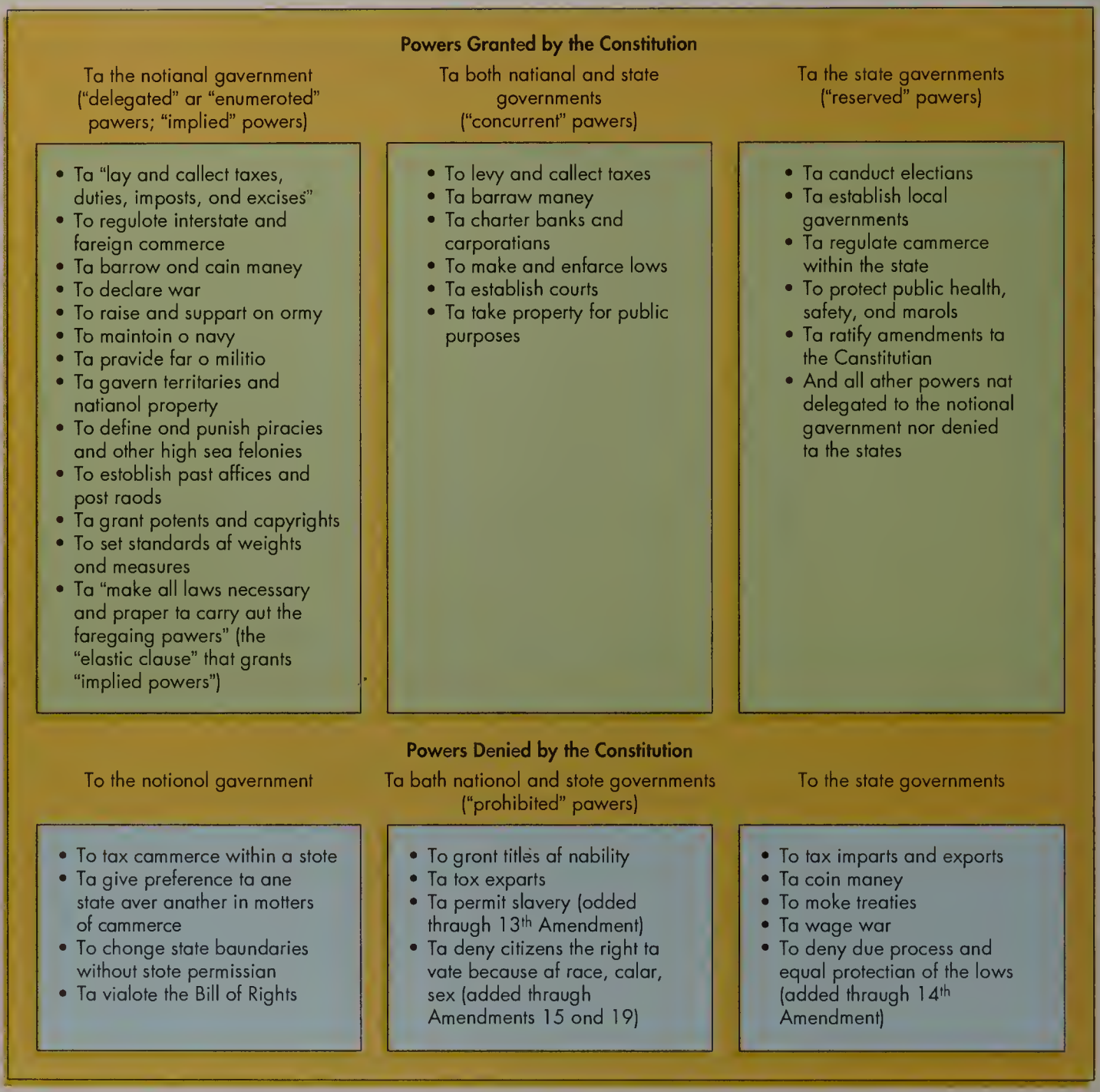


FIGURE 2.1
Constitutional Basis of the Federal System

The top middle box lists powers shared by the two levels of government; the bottom middle box shows powers denied to both. Powers on the upper left belong to the national government exclusively; those on the upper right are the states'.

gives Congress the power to establish a national bank. The bank's lawyers, however, insisted that the power to charter a bank was implied in the constitutional authority to collect taxes, borrow money, and regulate commerce.

CRITICAL THINKING

Is the structure of American government too complex and cumbersome to deal with today's public problems?

The Supreme Court unanimously sided with the national government. "Let the end be legitimate," stated Chief Justice John Marshall, "let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional." In that decision, Marshall was agreeing with the national government that by giving Congress the explicit power to regulate commerce, the framers of the Constitution implicitly granted Congress the right to charter a bank. This broad interpretation of the necessary and proper clause (also called the "elastic clause") altered the position of the states by greatly expanding the potential powers of the national government. The Bank of the United States survived until the 1830s, when President Andrew Jackson's opposition caused it to close. In 1913, Congress once again set up an agency for managing the banking system. That agency, the Federal Reserve System, still regulates the nation's major banks.[28] The right of Congress to establish such banks is implied in the necessary and proper clause.

The Constitution does not provide a specific list of the powers left to the states. In fact, there is no evidence that the framers of the Constitution even considered doing so. Writing in defense of the Constitution, James Madison noted that the framers felt that there was no need for this because the only powers given to the newly formed national government were those "enumerated" in the body of the Constitution. This approach left to the states the power over "all other objects."[29] This position was made explicit in the Tenth Amendment, which was added to the Constitution in 1791 (see the discussion of the Tenth Amendment in Chapter 3). That amendment declares that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." Historically, these **reserved powers** have included such responsibilities as providing for public education, building local roads and highways, and regulating trade within a state's borders.

Reserved powers The powers that the Constitution provides for the states, although it does not list them specifically; sometimes called "residual powers." As stated in the Tenth Amendment, these include all powers not expressly given to the national government or denied to the states.

Powers Within the National Government. Following Montesquieu's prescription, the framers gave each of the three branches of the national government a distinct part of the functions that any government must perform. According to this model, any government must do three things: It must pass laws (legislate), enforce those laws (execute), and settle disputes or controversies arising from application of the laws (adjudicate).

In Article I of the Constitution, the framers established Congress as the legislative branch. It is notable and important that they also chose Article I as the place to locate the delegated powers of the national government. That placement reflects the framers' desire to make certain that the representative parts of the national government—the House of Representatives and the Senate—would be the primary fount of authority at the national level.

In contrast, the description of executive power in Article II takes the form of noting what roles the president will play and what duties he or she will carry out. Chapter 11, on the presidency, describes in greater detail how those roles and duties have expanded over the two centuries.

Finally, Article III says little more than that the "judicial power of the United States shall be vested in one Supreme Court" and in whatever lower courts Congress establishes. As we discuss later in this chapter and again in Chapter 13, on the judiciary, the meaning of "judicial power" was articulated in the landmark case of *Marbury* v. *Madison* in 1803.

Limiting Governmental Powers

The Constitution also sets limits on the powers of both the national and the state governments. For example, Section 9 of Article I forbids Congress to suspend the privilege of a writ of habeas corpus except in time of rebellion or invasion. A **writ of habeas corpus** is a court order that individuals can seek in order to protect themselves against arbitrary arrest and detention. By issuing such a writ, a court can order public officials to bring a suspect or detainee before a judge to determine whether he or she is being held on legal grounds. Another provision prohibits the national government from passing a bill of attainder or an ex post facto law. A **bill of attainder** is a legislative act that declares a person guilty of a crime and sets punishment without the benefit of a formal trial. An **ex post facto law** makes an action criminal even though it was legal when it was performed.

Writ of habeas corpus A court order that protects people against arbitrary arrest and detention.

Bill of attainder A legislative act declaring a person guilty of a crime and setting punishment without the benefit of a formal trial.

Ex post facto law A law declaring an action criminal even if it was performed before the law making it illegal was passed.

Perhaps the best-known limits on the powers of the national government are provided in the **Bill of Rights,** a term usually applied to the first ten amendments, which were added to the Constitution in 1791 (see Table 2.3). Most of these amendments guarantee the fundamental liberties of citizens (see Chapter 4, on rights and liberties). They were added to the Constitution to satisfy the demands of critics who complained during the ratification process that the original document did not adequately protect individual rights.[30]

Bill of Rights The first ten amendments to the Constitution, which collectively guarantee the fundamental liberties of citizens from abuse by the national government.

The First Amendment protects freedom of expression—speech, press, assembly, and religion. Other amendments prohibit national officials from infringing on the right to bear arms (Second), from arbitrarily ordering families to quarter soldiers (Third), from conducting unreasonable searches and seizures (Fourth), from forcing any person to testify against himself or herself in a criminal trial (Fifth), and from requiring excessive bail or inflicting "cruel or unusual punishment" (Eighth).

The Fifth Amendment also forbids the national government to take any action that might deprive a person "of life, liberty, or property" without "due process of law" or "just compensation." The Sixth Amendment ensures a "speedy trial, by an impartial jury" in criminal cases, and the Seventh Amendment extends the right of jury trial to civil cases.

The Constitution also places limits on the powers and actions of the states. Section 10 of Article I, for instance, contains a list of powers denied to the

TABLE 2.3
The Bill of Rights Adopted in 1791

Rights Addressed	Amendment
Freedom of expression	1. Freedom of religion, speech, press, assembly, and petition
Personal security	2. Right to bear arms 3. No quartering of troops without consent 4. Protection against unreasonable search and seizures
Fair treatment under law	5. Right to presentation of indictment; guarantee against double jeopardy, self-incrimination; guarantee of due process of law and just compensation 6. Right to speedy and public trial 7. Right to jury trial in civil cases 8. Guarantees against excessive bails, fines, and punishments
Reserved rights and powers	9. Powers reserved to the people 10. Powers reserved to the states

states. Other sections set limits on the power of the states in relation to one another and to the national government. Article IV requires that each state give **full faith and credit** to the "Acts, Records, and judicial Proceedings of every other state." Thus a divorce granted in Nevada must be honored in New York, and vice versa. It also mandates that the "Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the Several States." Under this **privileges and immunities** guarantee, the right you have as a twenty-one-year-old resident of New Jersey to purchase and consume alcohol in New York (where the legal age for alcohol purchase and consumption is twenty-one) cannot be denied to you just because you are from out of town. We take these provisions of the Constitution for granted today, but they were the source of considerable debate and compromise at the convention as the framers sought to create a strong national government while maintaining state autonomy.

Full faith and credit The requirement, found in Article IV of the Constitution, that each state respect in all ways the acts, records, and judicial proceedings of the other states.

Privileges and immunities A provision in Article IV of the Constitution requiring that the citizens of one state not be treated unreasonably by officials of another state.

Another problem the framers faced was how to ensure that the laws of the national government would take priority over the laws of the states. One proposal called for giving Congress the power to declare state laws illegal if they interfered with congressional policies. Another asked for a constitutional provision allowing national officials to use armed force if necessary to obtain state compliance. In the end, the delegates settled for a statement found in Article VI. It declares that the Constitution and all laws and treaties "made in Pursuance thereof" would be considered "the supreme Law of the Land." Commonly referred to as the **supremacy clause,** this provision was to be enforced through both national and state courts.

Supremacy clause A provision in Article VI declaring the Constitution the supreme law of the land, taking precedence over state laws.

CLOSER TO HOME



Changing State Constitutions

Changing the U.S. Constitution is no easy task. Of the more than ten thousand proposed amendments that have been introduced in Congress since 1791, only thirty-three made it through the first step in the process and were submitted to the states for ratification. Of those, only twenty-seven were actually adopted.

The situation is quite different at the state level. For example, since its adoption in 1901, the Alabama state constitution has been amended 556 times. California's constitution is a bit older (adopted in 1879), and it has been amended 485 times. South Carolina's 1896 constitution has been amended 463 times.

The oldest constitutions in the country are all found in New England. The constitution of the Commonwealth of Massachusetts is the oldest. In effect since 1780, it has been amended 117 times. New Hampshire's somewhat younger state charter has been modified 143 times. Vermont's constitution, which is next in age, is the shortest at 6,600 words—yet even it has been changed 50 times.

Louisiana holds the distinction of both having the youngest constitution (1975) and having had the greatest number of constitutions—eleven different ones since it became a state in 1812. Although less than twenty-five years old, the Louisiana constitution has already been amended 54 times.

Historically, the trend in the states has been to make constitutional change easier and to give the general public a bigger role in initiating or approving amendments or other forms of constitutional revision. Today, only Delaware does not provide a means for the public to participate in the process. In all states, the legislatures can propose an amendment, and almost all require voter approval of the legislative recommendations. Some states also allow a constitutional convention to be convened, either by the legislature or by petition. In some states, a question about whether a state constitutional convention should be called is required to be put before the voters every ten or twenty years. In other states, a constitutional study commission may be convened to consider and recommend changes.

In at least eighteen states, a constitutional amendment can be initiated through a petition circulated among voters. The number of valid voter signatures needed to get a proposal on the ballot varies: In California, for example, it must equal at least 8 percent of the total votes cast for governor in the last election. In Arizona, the requirement is 15 percent, whereas in North Dakota an amendment must gain the support of 4 percent of the entire state population to get on the ballot.

On the history of amending the national Constitution, see Richard B. Bernstein, with Jerome Agel, *Amending America: If We Love the Constitution So Much, Why Do We Keep Trying to Change It?* (New York: Times Books, 1993). On constitutional change in state governments, see Ann O'M. Bowman and Richard Kearney, *State and Local Government*, 4th ed. (Boston: Houghton Mifflin, 1999), chap. 3.

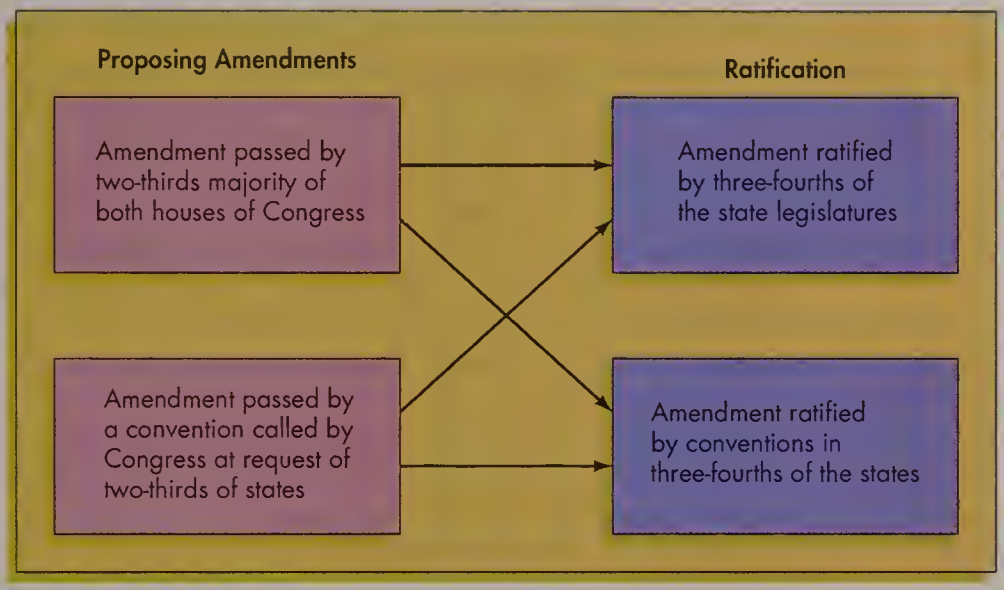
Allowing for Change

Like all constitutions, the American document also describes the way it can be changed. The framers did not make the process of amending the Constitution easy. The procedures require action at both the state and the national level (see Figure 2.2). Amendments can be proposed in either of two ways:

FIGURE 2.2

How the Constitution Can Be Amended

The framers created four methods for amending the Constitution. With the exception of the Twenty-first Amendment, all amendments so far have used the Congress/state legislature route (at top).



by a two-thirds vote of both houses of Congress or by a national convention called by Congress at the request of two-thirds of the states. Congress then decides how the amendment will be ratified: by three-fourths of the legislatures or by ratifying conventions in three-fourths of the states.

The method used for all but one of the Constitution's twenty-seven amendments has involved a proposal by Congress and ratification by state legislatures. The single exception was the Twenty-first Amendment, which repealed the Eighteenth (see the discussion of the "prohibition" amendments on page 48). In that case, the amendment was proposed by a two-thirds vote of Congress but was ratified by state conventions.

How difficult is this amendment process? Over the past two centuries more than six thousand constitutional amendments have been proposed in Congress. Yet only twenty-seven have passed. Some proposed amendments are introduced in Congress but never come to a vote in either body. Some come to a vote in Congress, but fail to get the required two-thirds majority in each chamber. This has been the case with efforts to change or abolish the electoral college method of electing the president (see pp. 203–205). Many Americans saw the need for change when George W. Bush won the 2000 election despite losing the popular vote nationwide. Established by the Constitution's framers as a compromise between those who favored and feared the direct election of the president, it was the subject of 1028 proposed constitutional amendments prior to the 2000 election. Yet only one proposal—the Twelfth Amendment—actually passed through the amendment process successfully. In all other instances, electoral college reform proposals did not make it through Congress. In 1956 and 1969, the House voted for an amendment providing for the direct election of the president, but both times the Senate failed to pass the proposal. Following the 2000 election, members of Congress on both sides of the political spectrum advocated

major changes. While the possibility of change is as high as it has ever been, students of the constitutional amendment process realize that such changes are rarely successful and often take many years to accomplish.

Other proposals are not adopted because they fail to get the required number of states to ratify them. And in at least one instance, it took more than two centuries for an amendment to obtain the ratification of enough states to actually become an amendment. The cases of the Equal Rights Amendment (ERA) and the Twenty-seventh Amendment show how difficult the amending process can be. The ERA stated that "equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." Beginning in 1923, the ERA was introduced in Congress at almost every session, but it remained tied up in the legislative process until 1972, when it finally received the approval of both the House and the Senate. As proposed, the ERA needed to be ratified by thirty-eight states by June 30, 1982,[31] to become an amendment to the Constitution. Thirty-five states had given their approval of the ERA by 1978, but supporters could not muster enough votes in three other state legislatures to pass the proposed amendment. Despite that defeat, the ERA has been reintroduced in Congress at each session since 1983.

CRITICAL THINKING

Do the current rules make it too difficult to bring about constitutional change? Should the process for constitutional change be made easier?

As for the Twenty-seventh Amendment, it took 203 years for it to receive the ratification of enough states to become part of the Constitution. Originally proposed as part of the Bill of Rights in 1789, it set limits on the power of sitting members of Congress to increase their own compensation. By the end of 1791, only six of the ten states needed for adoption at that time had voted to ratify the proposal. But the effort to pass the amendment was revived in the 1980s, and on May 7, 1992, the Michigan legislature formally ratified the amendment, giving it the support of the thirty-eight states required for adoption.

The Constitution has been successfully amended seventeen times since the Bill of Rights (see Table 2.4).[32] Four amendments extend voting rights to a variety of groups: to all men, regardless of race (Fifteenth); to women (Nineteenth); to residents of Washington, D.C. (Twenty-third); and to all citizens eighteen years of age or older (Twenty-sixth). In addition, the Twenty-fourth Amendment eliminated the practice of using poll taxes to stop a citizen from voting.

Another group of amendments changed some of the rules for electing officials and the period of time and conditions under which they serve in office. The Twelfth Amendment spells out the process for electing the president and vice president. The Seventeenth Amendment calls for the direct election of senators; before its adoption, senators were elected by state legislatures. The Twentieth Amendment changes the dates for the inauguration of the president and the convening of Congress, and the Twenty-fifth clarifies the procedures for presidential succession in case of disability, death, or resignation. The Twenty-second Amendment limits the tenure of elected presidents to two full four-year terms. The Twenty-seventh Amendment prohibits a sitting Congress from giving itself a raise.

Other amendments altered the constitutional powers of government institutions. For example, the Eleventh Amendment limits the power of federal

TABLE 2.4
Amendments 11–27 to the Constitution

Amendment	Year Proposed by Congress	Year Adopted	What It Does
11	1794	1798	Gives states immunity from certain legal actions
12	1803	1804	Changes the selection of president and vice president through the electoral college
13	1865	1865	Abolishes slavery
14	1866	1868	Defines citizenship and citizen rights; provides due process and equal protection of the laws
15	1869	1870	Extends the right to vote to African-American males
16	1909	1913	Gives Congress power to impose an income tax
17	1912	1913	Provides for direct election of U.S. senators
18	1917	1919	Outlaws alcoholic beverages
19	1919	1920	Extends the right to vote to women
20	1932	1933	Changes the dates for the start of congressional and presidential terms
21	1933	1933	Repeals the Eighteenth Amendment
22	1947	1951	Limits presidential tenure in office
23	1960	1961	Extends the right to vote in presidential elections to residents of the District of Columbia
24	1962	1964	Prohibits the use of tax payment (poll tax) as a basis for eligibility to vote
25	1965	1967	Establishes procedures for presidential succession, for determining presidential disability, and for filling vacancy in vice presidency
26	1971	1971	Lowers the voting age to eighteen
27	1789	1992	Limits Congress's ability to change its own compensation

courts to hear cases involving the states, and the Sixteenth Amendment gives Congress the power to establish a national income tax.

The Thirteenth and Fourteenth Amendments address the rights of citizens. The Thirteenth Amendment ended slavery. The Fourteenth forbids states to deny individuals the rights guaranteed under the Constitution; these rights include due process and equal protection of the law for all. In Chapter 4,

on rights and liberties, we discuss the important role that the Fourteenth Amendment has played in the development of American civil liberties and civil rights.

Only two amendments have actually addressed questions of public policy explicitly. In fact, both of these focused on the same issue: the production and consumption of alcoholic beverages in the United States. In 1919 the states formally ratified the Eighteenth Amendment, prohibiting the manufacture, sale, or transportation of alcoholic beverages in the United States. In 1933, however, the Twenty-first Amendment repealed that prohibition.

While making the formal amendment process difficult, the framers left the door open to changes that might occur through interpretation of constitutional provisions.[33] One of the framers, Alexander Hamilton, stated that a constitution "cannot possibly calculate" the effects of changing conditions and must therefore "consist only of general provisions."[34] By interpreting those "general provisions," public officials have given meaning and shape to the Constitution over the last two centuries (see Chapter 4, on rights and liberties).

In summary, as originally designed, the U.S. Constitution provides five critical foundations on which today's American government operates:

- It establishes the legitimacy of the national government.
- It describes the basic institutional structures of American government.
- It defines the powers of those institutions.
- It places limits on those powers.
- It specifies the procedures used to make changes in the government system.

In terms of the myth discussed earlier, has the Constitution of 1787 endured as timeless and perfect, or has American government emerged as a completely different entity despite the existence of that document?

As you continue to learn about the reality of American government and politics in the chapters that follow, it will become increasingly evident that the details of the actual operations of American government today bear little resemblance to the outline given in the U.S. Constitution, even as amended. Certainly, the major institutions established by the framers can be recognized, but in many respects Congress, the presidency, and the judiciary are quite different in structure and process from the institutions laid out in Articles I, II, and III. Thus, some might argue that the written Constitution is only a national symbol, like the flag or the bald eagle. It can hardly be regarded as an accurate description or a set of governmental operating instructions. If that is the case, then perhaps we might consider calling a national convention to rewrite that document to reflect the way American government actually operates.

However, there is another side to the written Constitution that we need to consider before we take such a radical step. The Constitution of 1787 did more than establish the machinery of American government. It also contains several basic principles that have served the nation well for more than two centuries.

The Enduring Principles

It would be incorrect to think that the U.S. constitutional system has succeeded because it is an efficiently operating, perfectly crafted, and carefully maintained machine. Instead, American citizens have benefited from a living constitution that has thrived because of *five enduring principles* that have allowed our system of government to adapt to the changing conditions of the last two hundred years. These principles—the rule of law, republicanism, the separation of powers, checks and balances, and national supremacy—are at the heart of that living constitutional system.

The Rule of Law

Rule of law The principle that there is a standard of impartiality, fairness, and equality against which all government actions can be evaluated. More narrowly, the concept that no individual stands above the law and that rulers, like those they rule, are answerable to the law. One of the most important legacies of the framers of the Constitution.

Although the words **rule of law** are never mentioned in the Constitution, this idea is one of the most important legacies of the framers. As a general concept, the rule of law has its roots deep in western civilization, but it emerged in its modern form during the 1600s in Europe. According to the rule-of-law concept, there exists "a body of rules and procedures governing human and governmental behavior that have an autonomy and logic of their own." Under such rules and procedures, government and public officials are bound by standards of fairness, impartiality, and equality before the law.[35]

The rule-of-law principle is found in a number of constitutional provisions and implies that those provisions limit the powers of both national and state governments. For example, in Article IV of the Constitution, the framers included a provision that the "Citizens of each State shall be entitled to the Privileges and Immunities of Citizens in the several states." The privileges and immunities clause was intended to prevent any state from using its legal powers to discriminate against out-of-staters. Similarly, states are prohibited from passing any "Law impairing the Obligation of Contracts," thus preventing any governing group from arbitrarily voiding earlier agreements. That last provision was especially important to those among the framers who feared the passage of debtor-relief laws. The Bill of Rights added strength to the rule-of-law principle through the Fifth Amendment by requiring "due process of law" and "just compensation" whenever government initiates adverse actions against a citizen. The "equal protection of the laws" clause in the Fourteenth Amendment is still further evidence of how important this principle has been throughout our history.[36]

Another way of thinking about the rule-of-law principle is that in American government the rulers, like those they rule, are answerable to the law. No individual stands above the law, regardless of the background of that person or the office that he or she holds. Just as there are laws that address the behavior of general citizens, so there are laws that focus on the behavior of public officials. Those laws generally set limits on the powers of these officials or prescribe the procedures they must use in carrying out their duties. Under the rule-of-law

MYTHS IN POPULAR CULTURE





A Paper Constitution in the Television Age

Some critics argue that, far from the myth of a timeless and perfect constitution, just the opposite is true—that the Constitution is outdated and irrelevant in today's fast-moving and swiftly changing times. They point out that the number and composition of the American people have changed significantly over the past two centuries. Equally important, they say, is the extent to which basic social relationships—including the way Americans think about social problems and communicate with one another—have also changed radically.

The framers grew up during the Enlightenment, or the "Age of Reason." They matured in a time when the principal vehicle for exchanging ideas was the written word. It was, in the words of media critic Neil Postman, the Age of Paper.

Why is the medium of the period important? In the 1960s, Marshall McLuhan, another student of popular culture and media, wrote a book that radically transformed the way we look at modern society. In *Understanding Media,* McLuhan argues that what we say is not as important as the *medium through which* we say it. In a phrase that has become central to the study of popular culture, McLuhan boldly posits: "The medium is the message!"

The written word had considerable impact on the way the framers thought. "To engage the written word means to follow a line of inference-making and reasoning," argues Postman. "It means to uncover lies, confusions, and overgeneralizations, to detect abuses of logic and common sense. It also means to weigh ideas, to compare and contrast assertions, to connect one generalization to another."

That the Constitution was written in the Age of Paper tells us a great deal about its form and content, and about the debate that surrounded its birth. The framers would not be satisfied with the type of "unwritten" constitution found in England, where tradition and several different documents were considered sufficient; nor did they want to merely create a patchwork of institutions through amendments to the Articles of Confederation. Instead, they insisted on having the Constitution take the form of words set forth on a freshly drawn legal document that contained relatively coherent provisions for the operations of American government.

Although much of the debate over the Constitution took place in taverns and other public meeting places, both supporters and opponents used newspapers and pamphlets to make their points. As noted in this chapter, a great deal of our knowledge about what the framers meant to say comes from the *Federalist Papers,* which were originally published in New York newspapers as part of the campaign for ratification in that state. The antifederalists' opinions were also found in the popular medium of the day. As a result of that medium, we have a record of some of the most intelligent political debate to occur on these shores.

We can only wonder what the Constitution would have been like if it had been drawn up and debated during the middle of the nineteenth century (what Postman terms the "Age of Telegraphy") or during our own time (in the "Age of Television"). The written word is now subordinate to pictures on small screens, which seek more to entertain than to inform and which provide little or no opportunity for intelligent discourse. What form would a new constitution take in this Age of Television? Would we insist on a written legal document, or would we rather have a collection of sights and sounds on videocassette or laser disc? Would the content reflect the crafting of carefully selected and meaningful words, or would it rely on images that generate more "heat" than

meaning? And what kind of debate would we have: a well-reasoned discussion on the pros and cons of important issues, or speeches filled with symbolic gestures and empty sound bites?

As critical as Postman and others are of the Age of Television, one must also wonder what will happen as we enter the Age of the Computer. Some look at the revolution in word processing, telecommunications, and publishing and see the computer as a vehicle for returning to a "reasoning world" in which words are at the center of discourse and debate. Others, however, are not so sanguine. The Age of the Computer also promises even more reliance on sights and sounds, with information moving too fast to allow logical and reasoned thought.

Of course, at present the myth of the timeless and perfect Constitution is so strong that we are unlikely to witness any movement to replace the Constitution with a new one. But the idea of an outdated and irrelevant Constitution highlights the dilemma of operating under a constitution developed during the Age of Paper. As we see in this chapter, the principles established in the Constitution have been adaptable to the changing media through two centuries of technological innovation. We can only speculate whether these principles can be adapted to the new challenge posed by the Age of the Computer.

For the quotation above and further discussion of these points, see Neil Postman, *Amusing Ourselves to Death: Public Discourse in the Age of Show Business* (New York: Penguin Books, 1985), especially pp. 44–63; 125–141. See also Marshall McLuhan, *Understanding Media: The Extensions of Man* (New York: McGraw-Hill, 1964).

principle, those limits and prescriptions must be adhered to if the American constitutional system is to function properly.

How important is this constitutional principle? The rule of law has its greatest impact on the day-to-day operations of American government. Almost every action government agencies undertake, from the routine task of issuing monthly social security checks to dramatic efforts to help the survivors of earthquakes and other disasters, is carefully designed to meet the requirements of due process of law and other constitutional standards that are the foundation of the rule of law. Violations of those procedures or standards are likely to lead to legal challenges. In fact, both state and federal courts are constantly hearing criminal cases and civil lawsuits in which possible violations of the rule of law are at issue.[37]

No one is exempt from the rule-of-law principle. The most powerful political officials have had to bend to its force. In August 1974, for example, President Richard M. Nixon resigned in the face of charges that he took part in a criminal cover-up of White House involvement in a break-in at the Democratic party's national headquarters at the Watergate office complex in Washington, D.C. Although Nixon and many of his supporters perceived the Watergate cover-up as a relatively minor offense, the president's attempt to circumvent the law resulted in enough political pressure to bring about the first presidential resignation in American history. Nixon and others learned that no public official, not even the president, stands above the law. This lesson in the rule of law principle was reinforced twenty-five years later when President Bill Clinton was impeached by the House and tried in the Senate on charges that he had committed the crime of perjury (see discussion of impeachment below).

Republicanism

Republicanism A doctrine of government in which decisions are made by elected or appointed officials who are answerable to the people, not directly by the people themselves.

Federalist Papers A series of editorials written by James Madison, Alexander Hamilton, and John Jay in 1788 to support the ratification of the Constitution in New York State. Now regarded as a major source of information on what the framers were thinking when they wrote the Constitution.

Despite the phrase "We the People," the Constitution's framers had questions about the ability of the American people to rule themselves directly. In turning to **republicanism,** the framers created a government in which decisions are made by elected or appointed officials who are ultimately answerable to the people. The framers opposed a direct democracy because they distrusted human nature and the capacity ordinary citizens have to govern themselves.

We know something about the framers' views on democracy thanks to documents such as the ***Federalist Papers,*** a series of editorials that James Madison, Alexander Hamilton, and John Jay wrote in 1788 in support of ratification of the Constitution. In the "Federalist No. 10" (which is reprinted in the Appendix), for instance, Madison argued that democracies "have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have ever been as short in their lives, as they have been violent in their deaths."

What did the framers see in republicanism that they did not see in direct democracy? Again we turn to the "Federalist No. 10," where Madison argued that the problems of government can be traced to the "mischiefs of faction." He defined a faction as a group that puts its shared interests ahead of the rights of others or the interests of the community as a whole. These self-serving factions can be small or large; they can even include a majority of the people. According to Madison, all factions pose a threat to the general well-being of society. Because the causes of faction are basic to human nature, eliminating them is impossible. Thus, if any government is to serve the general interest of the people, it must be designed so that the potentially destructive power of factions can be eliminated or controlled.

CRITICAL THINKING

Is the U.S. constitutional system democratic enough? If not, what other changes should be made?

Madison and the framers favored a republican form of government, in which the people had some voice—but a voice filtered through their representatives. The community was to be governed "by persons holding their offices . . . for a limited time or during good behavior." And although all officials would be answerable to the people, some would be more insulated from public pressure than others. Members of the House of Representatives were to have the most exposure: They alone would be elected directly by the American voters, and they would have comparatively brief terms, two years. Senators and the president were assigned longer terms, and, under the original provisions of the Constitution, the people did not elect them directly. Instead, state legislators selected senators, and an electoral college, with members selected by the states, chose the president. These methods were later changed by constitutional amendments and by the action of state legislatures. Supreme Court judges received additional protection from the whims of constantly changing public opinion: They were given lifetime appointments and could be removed only through the lengthy and difficult process called impeachment (see discussion below).

Although the framers felt impelled to take these precautions, they never lost sight of the basic principle of republicanism: that the ultimate responsibility of government officials is to the American public.

Separation of Powers

Separation of powers
The division of the powers to make, execute, and judge the law among the three branches of American government: Congress, the presidency, and the courts. This principle was adopted by the framers to prevent tyranny and factionalism in the government.

The principle of the **separation of powers** is also linked to the effort to control factions. By splitting governmental authority among several branches of government and giving each an area of primary responsibility, the framers sought to minimize the possibility that one faction could gain control. "The accumulation of all powers, legislative, executive, and judiciary, in the same hands," states Madison, "may justly be pronounced the very definition of tyranny."[38] Thus, to help avoid tyranny, the power to make, to execute, and to judge the law was divided among the three branches: Congress, the presidency, and the courts.

This principle was an important one for the framers, who debated many hours about the design of the national government. The idea was to distribute powers among the three branches not in order to increase government efficiency, but to prevent efficiency that they regarded as potentially dangerous.[39] Each branch was to stand independent of the others when exercising its governmental authority. In this way, the American public would be protected against the tyranny that Madison and others so feared.

The framers reinforced this principle in several ways beyond just giving each institution a distinct role in government. The Constitution makes certain that those holding a position in one branch will not serve in either of the others. This prohibition has been both tightened and loosened in practice over the years. During the 1960s, Supreme Court Justice Abe Fortas resigned his position after it was revealed that he had provided advice to his old friend Lyndon Johnson and that he had sat in on political meetings at the Johnson White House. In contrast, during the Cold War, several sitting members of Congress retained their high-ranking positions in the military reserve forces—a seeming violation of the prohibition against holding positions in more than one branch of the national government because the military is part of the executive branch.

The separation of powers was also reinforced by the framers through the different constituencies and term lengths assigned to the various branches of the national government. Members of the House of Representatives, for example, are directly elected by the eligible voters of their respective districts every two years. U.S. senators, on the other hand, were originally selected by the legislatures of their states for six-year terms, implying strongly that they represented the interests of the state governments that sent them to Washington. The design of the electoral college that was to select the president (see Chapter 7, on campaigns and elections) was intended to guarantee that the winner would regard the entire nation as his or her constituency during a four-year term in office. Along with the lifetime appointment, the elaborate process set up for naming federal court judges—nomination by the president and confirmation by the Senate—was intended to guarantee that those positions were filled by people who were more accountable to the law than to shifting political moods.

Checks and Balances

Checks and balances The principle that lets the executive, legislative, and judicial branches share some responsibilities and gives each branch some control over the others' activities. The major support for checks and balances comes from the Constitution's distribution of shared powers.

While separation of powers provides independent roles for Congress, the presidency, and the courts, the principle of **checks and balances** forces them to work together. By giving each institution the capability of counterbalancing the authority of the other branches, the Constitution makes these institutions interdependent.

The key element in the system of checks and balances is the distribution of shared powers among the three government branches. Each branch depends on the others to accomplish its objectives, but each also acts as a counterpoint to the others (see Figure 2.3). The president's power to **veto,** or reject, legislation checks the legislative actions of Congress. The veto, in turn, can be overridden by a two-thirds vote of both chambers of Congress.

Veto The president's power to reject legislation passed by Congress, an important presidential check on the power of Congress. The veto can be overruled, however, by a two-thirds vote of both chambers of Congress. In 1995, Congress passed a limited line-item veto that gave the president the power to strike specific provisions of appropriation and tax bills.

While the veto has proved to be a powerful tool for the president in the checks and balances system, some have complained that it is of limited value because it leaves the president with no alternative but to either sign or veto an entire bill. If the president does not like a specific provision of a bill, he cannot veto that troublesome clause. Many state constitutions have given their governors such power in the form of a line-item veto, which permits them to strike a particular clause of a bill that comes before them. During the 1980s, President Ronald Reagan repeatedly asked Congress to consider a constitutional amendment or legislation that would provide presidents with the line-item veto, especially as a means for striking congressional actions that funded wasteful, or "pork barrel," projects or provided unnecessary tax breaks for a special-interest group. While Reagan did not get his wish, Congress passed a limited version of line-item veto legislation in 1995. Under the provisions of that bill, the president could exercise veto power over specific appropriation or tax bills that he concluded served the interest of individuals or designated groups. In June 1998, however, the U.S. Supreme Court declared the Line Item Veto Act unconstitutional.

Congressional authorization The power of Congress to provide the president with the right to carry out legislated policies.

Congress can restrict presidential power in a variety of other ways. Beyond the powers granted to the president in the Constitution, presidents must have **congressional authorization** to undertake any official course of action. In recent decades, Congress has often provided the White House with considerable flexibility in many areas, especially in the foreign policy field (see Chapter 15, on foreign and defense policy). At times, however, Congress may pass laws that place narrow limits on presidential authority.

Confirmation The power of the U.S. Senate to approve or disapprove a presidential nominee for an executive or judicial post.

The Senate may also check the president's power by using its right to confirm or reject presidential nominees for judicial and executive positions. Although the Senate rarely says no during these **confirmation** procedures, many such nominations have been withdrawn (or have never been submitted) because they were unlikely to get the necessary votes. The Senate also has the authority to approve or disapprove treaties through its **treaty ratification** powers.

Treaty ratification The power of the U.S. Senate to approve or disapprove formal treaties negotiated by the president on behalf of the nation.

The control of the public sector's purse strings by Congress is another powerful check on presidential power. Although the president can recommend a budget for Congress to consider, the actual appropriation of funds is in the hands of the House and Senate.

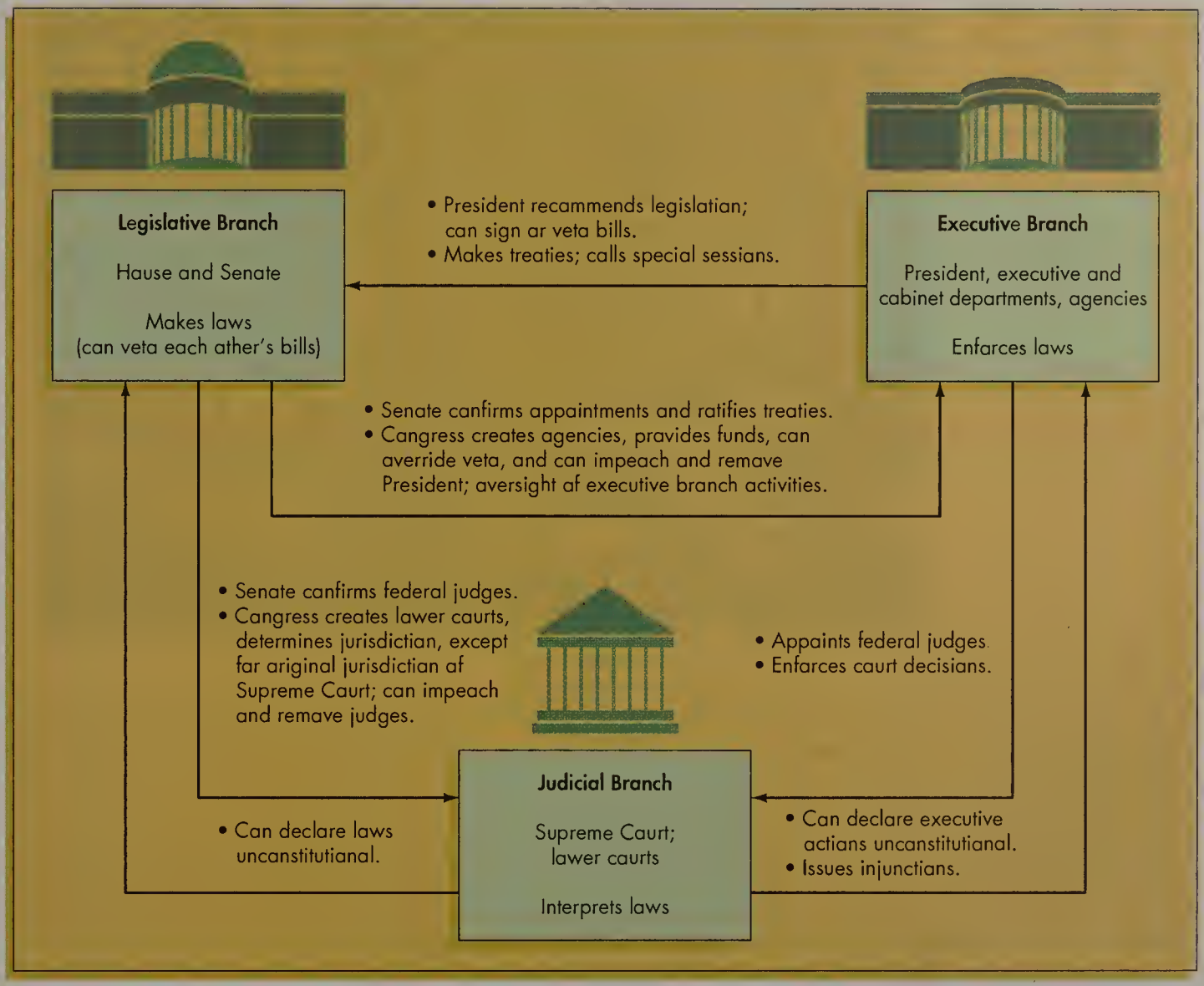


FIGURE 2.3
Separation of Powers and Checks and Balances

Under separation of powers, governmental authority is divided among the three branches: Congress exercises the power to make laws, the president exercises the power to execute laws, and the courts have the power to judge disputes arising under the laws. A system of checks and balances provides each branch with a means to counterbalance the authority of the other two, thus making the three branches interdependent

CRITICAL THINKING
Is impeachment an effective check on presidential power?

The ultimate restraint on presidential (as well as judicial) authority, however, resides in the power of Congress to remove a president or other public official from office. **Impeachment** is based on Article II, Section 4 of the Constitution, which holds that "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

The Clinton Impeachment Trial

Representative Henry Hyde led the team of U.S. House members who acted as prosecutors of President Clinton in the 1999 Senate trial.



Impeachment A formal charge of misconduct brought against a federal public official by the House of Representatives. If found guilty of the charge by the Senate, the official is removed from office.

Such removals involve two steps. First, the House of Representatives votes articles of impeachment, or formal charges, against the official. Once impeached, the official is tried by the U.S. Senate. If found guilty by a vote of the Senate, the official is removed from his or her position.

Charges of impeachment have been considered by the House against more than sixty officials, including nine presidents: John Tyler, Andrew Johnson, Grover Cleveland, Herbert Hoover, Harry S Truman, Richard M. Nixon, Ronald Reagan, George Bush, and Bill Clinton. Of those sixty instances, only seventeen have resulted in the House voting articles of impeachments that led to Senate trials. Most impeachments have been against sitting judges (twelve), and to date seven have been removed.[40] Only two of the trials have involved presidents.[41] In an 1868 trial, the Senate failed to convict President Andrew Johnson by just one vote. In the 1999 Senate trial of Bill Clinton, a sharply divided Senate failed by at least twelve votes to convict the president, thus ending a crisis that began when the House voted to impeach Clinton on December 19, 1998.

Judicial review The power of the courts to declare acts of Congress to be in conflict with the Constitution. This power makes the courts part of the system of checks and balances.

The most significant check that the courts have is found in their power of **judicial review,** by which the courts can declare acts of Congress to be in conflict with the Constitution. Not explicitly provided for in the Constitution, the power of judicial review was established in the case of *Marbury* v. *Madison* (1803) (see the discussion of this concept in Chapter 13, on courts, judges, and the law). Because they can hear lawsuits about the actions of public officials, courts also have an influence on the behavior of officials from the executive branch. At the same time, the president's power to appoint federal judges with the advice and consent of the Senate gives the White House some power over the courts. The

power of Congress over the courts derives in part from its constitutional authority to create or abolish any court other than the Supreme Court. Congress can also impeach and remove judges and has done so in several recent cases.

The principle of checks and balances is strengthened by the different methods of selecting officials, which the framers believed would ensure that the different branches represented different public perspectives. Variations in terms of office were intended to add a further check. For example, senators, responding from the perspective of their six-year terms in office, were expected to act in a more measured and conservative way than their peers in the House, who had only two-year terms.

In setting up the elaborate system of checks and balances, the framers pitted the three branches of government against one another. This has resulted in a slow and ponderous system that often frustrates officials who are trying to deal quickly with critical issues. Too rapid decision making is what the framers feared, however. More often than many of us like, the system works the way they planned it—deliberately and with care.

National Supremacy

Earlier we pointed out that the U.S. Constitution provides for a federal system in which national and state governments divide the authority of American government. Such a complex arrangement can work only if there is some principle that helps government officials settle fundamental disagreements among the different levels of government. If such a principle did not exist, then "the authority of the whole society" would be "everywhere subordinate to the authority of the parts." That, argued Madison, would have created a "monster" in which the head was under the control of its member parts.[42]

National supremacy The principle—stated in Article VI, the "supremacy clause"—that makes the Constitution and those laws and treaties passed under it the "supreme law of the land."

In the American constitutional system, that principle is **national supremacy.** As noted earlier in this chapter, the supremacy clause of Article VI of the Constitution makes the Constitution and those laws and treaties passed under it the "supreme Law of the Land." As you will see in Chapter 3, on federalism and intergovernmental relations, that principle has been a central factor in the evolution of the American federal system. It is impossible to understand the operations of American government today without grasping the meaning of federalism and the role of the national supremacy principle in American government.

Conclusion: Neither Timeless nor Irrelevant

In public opinion polls and in other forums, Americans continue to express pride in their constitutional system, and few advocate radical changes in the structure of government established by the Constitution.[43] For most, in fact, the

document represents the American people as a nation.[44] According to historian Theodore H. White, the American nation is united by a commonly accepted idea rather than by geography—an idea about government embodied in the U.S. constitutional system.[45] Yet Americans familiar with the way their government operates know that the specific provisions of the Constitution do not really reflect how their government functions most of the time.

Why do we maintain the myth of a timeless and perfect Constitution in light of the changes the Constitution has undergone and will continue to undergo? Our written Constitution is a wonderfully crafted document that deserves the accolades it receives from its admirers worldwide. Nevertheless, the written Constitution does not necessarily reflect the real operational constitution of the United States that is applied daily in this country. Jefferson was correct in noting that if our constitutional system is to survive, it must change with the times. Of necessity, in its operation, our government continually interprets and reinterprets the Constitution's provisions and its implicit principles. In the words of William Penn, written more than a century before the framing of the Constitution, "Governments, like clocks, go from the motion men give them; and as governments are moved and made by men, so by them they are ruined too. Wherefore governments rather depend upon men than men upon governments."[46] As you will see in later chapters, government also depends on laws, policies, court decisions, political attitudes and behavior, customs, traditions, and even the myths that surround the exercise of public authority in America.

And yet Madison was also correct, for there are a number of excellent reasons for maintaining the document and the myth of timelessness and perfection that accompanies it. Although the Constitution may not be timeless and perfect, it does provide a stable foundation of principles for our system of government. Furthermore, the Constitution is undeniably more than a legal document or instrument. It is a symbol, a unifying force that provides a common identity for Americans. One can hardly overlook the observation of commentator Irving Kristol that the Constitution stands with the American flag and the Declaration of Independence as part of the American "holy trinity."[47] In a nation that offers few unifying symbols, the Constitution performs that function extremely well.

Summary

1. The framers of the Constitution came together to solve fundamental problems that had arisen under the Articles of Confederation.

2. The roots of the Constitution can be found in the British legal tradition, including the principles that government officials, as well as ordinary citizens, must obey the law and that there exists a higher (constitutional) standard against which laws made by legislatures can be measured. The colonial experience of self-government and the political philosophy of the Enlightenment espoused by such writers as Hobbes and Locke also helped guide the Constitution's framers.

3. The Constitution's framers sought to establish the legitimacy of the government of the United States

as coming directly from the people and to create institutions that would embody its authority.

4. The framers considered alternative solutions to the problem of how to divide authority within the new national government. Their final decision, laid out in Articles I, II, and III, established legislative, executive, and judicial branches of government.

5. The Constitution describes the specific, or delegated, powers of the national government in Article I and establishes the implied powers of the national government in the necessary and proper clause. It also sets limits on national and state power and specifies the rules for making amendments.

6. The framers established in the Constitution the following fundamental principles of American government: the rule of law, republicanism, separation of powers, the system of checks and balances, and national supremacy. These principles have provided our constitutional system with the flexibility that has made it work for more than two hundred years.

7. Although in reality the Constitution does not live up to the myth of being timeless and perfect, neither is it irrelevant to today's American government. In addition to the basic principles it embodies, its veneration as a symbol of national identity is important to the success of American government.



Net Work

Do you need to find a copy of the U.S. Constitution? The Declaration of Independence? How about the Mayflower Compact or the Magna Carta?

- Many of the key historical documents related to American government can be found at the National Archives Classroom web site: **http://www.nara.gov/education/cc/main.html.**
- Yale University provides on-line access to many of the documents that precede the American constitution: **http://www.yale.edu/lawweb/avalon/constpap.htm.**
- The Congressional Research Service at the Library of Congress provides an on-line copy of the Constitution that is annotated with relevant Supreme Court cases and commentary: **http://www.access.gpo.gov/congress/senate/constitution/toc.html.**

If you really want to get into the history of the American constitutional system, the Web offers a number of options.

- Congress established the National Constitution Center in 1988, and its web site is a good starting point for studying the U.S. Constitution: **http://www.constitutioncenter.org/.**
- A general on-line introduction to American constitutional history can be found at **http://americanstrategy.org/foundations.html.**
- An on-line history of the U.S. Constitution and its evolution can be found at **http://odur.let.rug.nl/~usa/GOV/chap1.htm.**
- For a British documentary view of the American Revolution, see **http://learningcurve.pro.gov.uk/millennium/.**
- Conflicts involving interpretations of the Constitution are reviewed at **http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/home.html.**

As an exercise, use a search engine to see how much you can find on the Internet about the impeachment process and its history. When President Clinton was impeached in 1998 and put on trial in early 1999, dozens of web sites appeared to help inform the public. Some of them have disappeared from the Web, but others remain. For example, questions about the impeachment process are answered at the American Bar Association education web site: **http://www.abanet.org/publiced/impeach2.html.** Can you find some other good sites that explain the impeachment process?

CHAPTER 3

Federalism and Intergovernmental Relations

- The Evolution of American Federalism

Battles over Meaning (1790s–1860s): State-centered and nation-centered federalism
From Separation to Cooperation (1860s–1920s): Dual federalism; grant-in-aid programs
Toward Cooperation and Local Participation (1930s–1950s): Intergovernmental relations; cooperative federalism
The Urban Focus (1960s–1970s): Expanded programs; national goals
Reforming and Devolving (1970s–1990s): Critiques and responses; the Reagan years; Bush and Clinton
Restoring Dual Federalism (2000 and beyond?)

- The Actors of American Federalism

National Government Actors: The Supreme Court, Congress, the White House, and the federal bureaucracy
States in the Federal System: Responsibilities and roles
Local Governments: Status and diversity
The Intergovernmental Lobby: Public-sector interest groups
The Role of the Citizen: Influencing policy decisions
Many Dramas on the Stage: Continual conflict

- Conclusion: The Myths Versus the Dramas

MYTH & REALITY

Is the national government too weak or too dominant?

MYTH & REALITY

Whatever their individual opinions of George W. Bush and Albert Gore, Jr., many Americans regard the outcome of the 2000 presidential election as both shocking and embarrassing. Two facts stand out as they reflect back on the events of November and December 2000. First, Al Gore lost the election despite winning the national popular vote by more than half a million votes. Second, the outcome of the election seemed to hinge on a less-than-perfect vote count in just one state, Florida. How could this happen in a nation that takes such pride in being the world's leading democracy?

While some cynical observers might focus on explanations that look for conspiracies and stories of corrupt officials, the truth can be found in a particular feature of American politics that many Americans think of as an 18th-century anachronism: American federalism. In Chapter 2, we spoke of the important role that compromises played in the framing of the Constitution. In fact, our constitutional system would not exist if it weren't for the willingness of the framers to engage in negotiations on specific issues such as state representation in the national legislature or the ability of the national government to regulate trade and commerce (see Table 2.2). As important, most of these compromises focused on the central issue of the day: the relationship between states and the newly formed national government. What emerged is the system we call federalism.

It would be impossible to appreciate what took place during the 2000 election without an understanding of one of federalism's basic institutions, the electoral college.[1] As described in Chapter 7, the electoral college is the body established by the framers to select the president and vice president. It was a compromise reached after they had debated three alternative proposals. Initially, the framers considered having the top executive offices filled by a vote of Congress, but this was rejected because the framers felt it would create animosity and foster corruption within the House and Senate. A second proposal was to have the president selected through votes of state legislatures, but this was unacceptable to those who feared the president would remain beholden to those legislative bodies that provided backing for his selection. Finally, a proposal for the direct election of the president by popular vote was rejected for a variety of reasons. Some framers felt that the electorate from each state would vote for its own "favorite son," making it unlikely that a truly national winner would emerge. Others felt "big state" candidates would have an advantage and pay little or no attention to the interests of people who lived in smaller states. And, of course, there was the framers' inclination to favor "republican" institutions over more democratic ones (see discussion of "republicanism" in Chapter 2).

Significantly, the common theme running through each proposal was the need to develop a means for selecting the president and vice president that took into account the interests of the states. Whatever solution they came up with would have to strike a balance between those who sought to create a national presidency and those seeking an executive branch that reflected diverse state interests. Faced with a stalemate, the framers appointed a special "Committee of Eleven," who developed the initial proposals for an electoral college.

The electoral college was more than a means of selecting a president. It was designed to reflect and enhance the institutions and principles of federalism

that were central to the emerging constitution. It did this in three important ways. First, by giving each state a number of votes in the college equal to its membership in the House and Senate, the framers incorporated the principles of the Great Compromise between large and small states into the presidential election process. Second, by allowing each state legislature to determine the way that its electoral college delegates would be selected, the framers gave state lawmakers a significant role in shaping a national government institution. Third, by requiring the winning candidate to get a majority of electoral college votes (50 percent plus 1), the framers signaled their desire for the president to be someone who had at least some national stature, not a regional candidate who was able to get merely a plurality of the votes (i.e., more than any other candidate). If no one gained a majority in the electoral college, then the selection of the president would be sent to the House of Representatives. Even here, however, the principles of federalism were primary, for voting for president would be by state delegations rather than by individual representatives. That is, each state delegation would cast a single vote for one of the top electoral college vote-getters. The winner would be required to garner a majority vote of state delegations.

As with other federal institutions developed as a result of compromise among the framers, the electoral college has evolved into a mechanism that operates quite differently from what the framers anticipated. According to historians, the framers believed that electoral college delegates would most likely cast their ballots for a wide range of candidates, and that most elections would eventually end up in the House. But after passage of the Twelfth Amendment to the Constitution (see discussion in Chapter 2) and the emergence of political parties (see Chapter 6), the electoral college had settled into its present-day pattern. By 1836, all states had adopted a "winner-take-all" rule that committed the state's electoral college delegation to the candidate who won the popular vote for president in that state. (This "unit rule" is used in all states today except Maine and Nebraska.) Also, with the choices for president typically narrowed to the two major party candidates, it has been unnecessary for Congress to settle the presidential election. In fact, the last time the House determined who would be president was in 1824, when John Quincy Adams was selected over Andrew Jackson despite having received fewer popular votes than his opponent. Not surprisingly, when he finally became president in 1833, Jackson constantly urged Congress to pass a constitutional amendment abolishing the electoral college.

Despite numerous calls for eliminating or radically altering the electoral college over the past two centuries, it has endured with its fundamental structure intact. A key reason for this is the enduring power of American federalism. While often depicted as an anachronism in this age of national identity and globalization, federalism and the role of state and local governments remain an important part of the U.S. constitutional system. In this chapter we will examine the formal institutions of federalism and how federalism operates as intergovernmental relations.

It helps to understand federalism as a unique institutional stage on which the dramas of American government are played out by a wide range of political

actors. Early in the nation's history, the dramas involved questions of which major players—the states or national government officials—would emerge victorious in a contest over power and government authority.[2] Slavery emerged as the focus of federalist dramas by the mid-1800s, and eventually the story was played out on the battlefields of the Civil War. Government's role in regulating the American economy and dealing with social problems created by industrialization (for example, child labor) was at the center of the federalism stage by the turn of the century. By the 1950s and 1960s, the weekly playbill varied from civil rights and civil liberties to social policies (see discussions in Chapters 4 and 14). During the 1970s, environmental concerns joined the list of issues for American governments at all levels. In the 1980s and 1990s, it was welfare's turn. In all these eras and debates, the vaguely defined institutions of federalism were central to determining how each drama played out.

Central to these issues and the ongoing debate over the electoral college is the issue of national versus state authority. Supporters of a stronger national government and those seeking more power for state and local governments keep their debate alive through two contrasting myths. One is based on the assumption that the national government has been too weak and that more power should be given to officials representing the interests of the whole nation; and the other is based on the belief that state and local governments, being closest to the people, can best serve their needs and therefore should be the driving force in American government. From this perspective, the problem is one of national government dominance rather than national government weakness.

The *myth of national government weakness* has had many adherents, dating back to Alexander Hamilton. Hamilton, and those who came after him, argued for a stronger central government to help Americans face their problems—whether those problems involve building a new nation, developing a national economy, protecting the civil rights and liberties of all Americans, or maintaining a clean environment. In contrast, the *myth of national government dominance* reflects a fear of relying too much on Washington, D.C., to solve essentially regional and local problems. The adherents of this myth can trace its roots back to Thomas Jefferson and James Madison. According to the myth, the once highly decentralized federal system of nation-state relationships has slowly eroded over the past two centuries. State and local governments have not disappeared, the myth contends, but their powers have significantly declined. National officials, it seems, now wield the real public authority in this country. As one newspaper editorial noted, "One cannot conceive of an example of public policymaking that the states can engage in . . . without fear of contradiction by the Federal Government."[3] For those who believe in this myth, it seems clear that state and local governments are being integrated into a single, national system of government, in which public policies made in Washington, D.C., are carried out by state and local officials.

Public attitudes toward the issue of which level of government should have the power reinforce both myths. According to public opinion polls, many

Americans feel a great attachment to their state and local governments, although their confidence has varied over time. When asked how well they felt their state and local governments could handle problems, people surveyed in 1997 expressed a "great deal" or a "fair amount" of trust and confidence in those governments. At that time, 81 percent of respondents gave positive replies about their confidence in state governments, an increase of 18 percentage points over the response to that same question twenty-five years earlier. Local governments also fared well: In 1972, 63 percent of those surveyed said that they had confidence in local governments being able to handle local problems, and in 1997 that number had risen to 78 percent. (In contrast, American confidence in the ability of the national government to handle domestic problems declined from 70 percent in 1972 to 60 percent in 1997.)[4] In short, Americans tend to trust to the public officials closest to them, although that support fluctuates at times.[5]

It is equally clear, however, that Americans are less likely to turn to state and local officials when significant problems arise; instead, they look to Congress, the Supreme Court, and the Washington bureaucracy. By the 1960s, the national government was already engaged in a wide range of programs in areas that had once been state and local responsibilities alone—for instance, helping to fund education for the young and the construction of roads and sewage-treatment plants. And when new problems arise, such as auto emissions and other environmental issues, people often look first to Washington and then to their states. According to Terry Sanford of North Carolina, a former governor who later served in the U.S. Senate, the "people seem to conclude that the state vehicle is not so driveable as the federal vehicles."[6]

What is played out on the federalism stage frequently reflects the ongoing debate among adherents of those conflicting myths. In the rest of this chapter, we trace the historical development of that debate and then discuss the various actors who play important roles on the federalism stage.

The Evolution of American Federalism

As noted in Chapter 1, myths influence how we view the complex world of government and how we see history. This is especially true when it comes to how we understand the history of American federalism.[7] Each of the two myths concerning the national government presents a different picture of how the federal system has evolved. The myth of national government weakness depicts federalism as a continuous struggle by the nation's leaders to overcome the parochialism and active opposition of state and local interests, whereas the myth of national government dominance pictures federalism as a constant expansion of national power. A more realistic view shows the emergence of an increasingly complex set of relationships among the three levels of government—national, state, and local—as well as a variety of public and private interests.

CRITICAL THINKING

What did the framers have in mind when they created the federal system?

Battles over Meaning (1790s–1860s)

The Constitution is not completely clear on the powers of the national government relative to those of the states. This lack of precision caused conflict in the early years of the republic. Was the national government primary, or could states ignore the laws of Congress when they chose? Two competing answers emerged, one centered on the states and the other on the nation.[8]

Supporters of **state-centered federalism** wanted to allow the national government only limited powers. Led by Thomas Jefferson and James Madison, they argued that states could overrule national laws if they believed that those laws violated provisions of the U.S. Constitution.[9]

Proponents of **nation-centered federalism** argued that the authority of the national government goes beyond the responsibilities listed in Article I, Section 8, of the Constitution. They contended that the necessary and proper clause and the principle of national supremacy give the national government additional powers to act. Alexander Hamilton and, later, Daniel Webster took this position, as did Chief Justice of the Supreme Court John Marshall in *McCulloch* v. *Maryland* (1819) (see the discussion of that case in Chapter 2, on constitutional foundations). Five years later, in *Gibbons* v. *Ogden* (1824), the Supreme Court dealt another blow to the proponents of state power. It held that a New York law establishing a steamboat monopoly between New York City and New Jersey was not constitutional. Only the national government, the Court ruled, could regulate "commercial intercourse" **(interstate commerce)** between states.

The supporters of the state-centered approach did get some relief starting in the late 1830s when the Supreme Court made a number of rulings that established the existence of sovereign **police powers,** which a state could exercise as part of its duty "to advance the safety, happiness and prosperity of its people."[10] The existence of these police powers was used to justify state jurisdiction over economic matters.

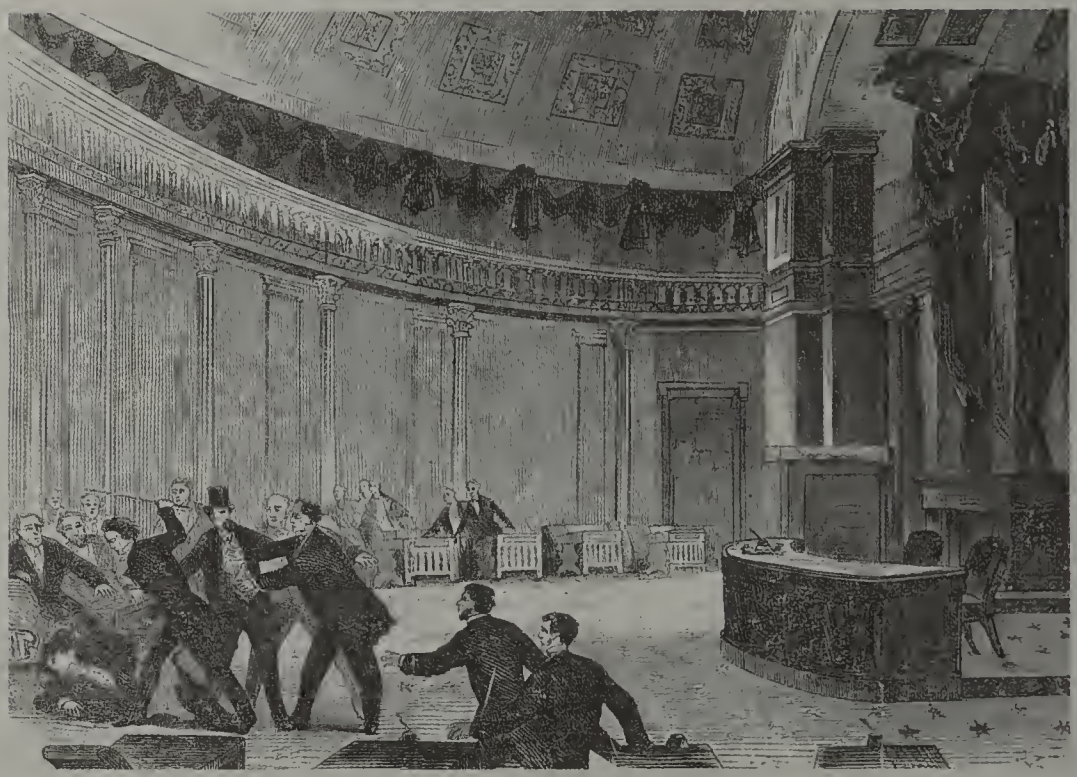
The debate between advocates of state-centered and nation-centered federalism was also conducted on the floor of Congress. Much of it focused on the issue of slavery, and at times the heated discussions turned bitter and even violent. In one particularly notable episode in the period leading up to the Civil War, Charles Sumner of Massachusetts was severely beaten on the floor of the U.S. Senate by Representative Preston Brooks, a member of the House from South Carolina who took exception to remarks made by the senator. Sumner did not return to the Senate chamber for three years, and never really recovered from the attack. Brooks resigned from the House but was reelected by his constituents, who regarded him as a hero.[11] Ultimately, the conflict over slavery was settled on the battlefields of the Civil War. Out of that bloody confrontation between the North and the South, nation-centered federalism seemed to emerge victorious. From that time on, if state and national laws and policies clashed, national legislation was to have priority. In that sense, the Civil War made it formally possible for the national government to achieve a dominant position in the federal system. In reality, however, the story was quite different.

State-centered federalism The view that the Constitution allowed the national government only limited powers and that the states could overrule national laws if congressional acts were determined to be in violation of the Constitution.

Nation-centered federalism The view that the authority of the national government goes beyond the responsibilities listed in Article I, Section 8, of the Constitution; it is based on the necessary and proper clause and the principle of national supremacy.

Interstate commerce Trade across state lines; in contrast to intrastate (within state boundaries) trade and foreign trade.

Police powers The powers of state governments over the regulation of behavior within their borders. These police powers were used to justify state jurisdiction over economic matters.



Brooks Beating Sumner in Senate

Prior to the Civil War, disputes over federalism and slavery were taken quite seriously. Senator Charles Sumner, an ardent abolitionist from Massachusetts, was nearly caned to death on the Senate floor by Preston Brooks, a member of the U.S. House from South Carolina. Brooks had taken exception to remarks Sumner had made about some pro-slavery members of Congress.

From Separation to Cooperation (1860s–1920s)

Dual federalism The perspective on federalism that emerged after the Civil War. It saw the national and state governments as equal but independent partners, with each responsible for distinct policy functions and each barred from interfering with the other's work.

Instead of national government domination, what developed after the Civil War was a system of **dual federalism,** whereby the national and state governments were regarded as equal partners. Under dual federalism, each level is perceived as responsible for distinct policy functions and each is barred from interfering with the other's work. Thus, whereas earlier cases had established that the states could not interfere with the national government's regulation of interstate trade, post–Civil War decisions held that the national government could not interfere with the power of the states to regulate the sale or manufacture of products or services within their own borders. Starting immediately after the Civil War, the Supreme Court declared in a series of rulings that insurance, fishing, lumbering, mining, manufacturing, building, banking, and a variety of other economic activities were not subject to federal regulation, but rather could be regulated under the police powers of individual states.

The most explicit statement of dual federalism was issued in 1871, when the Court held that within the borders of each state there are "two governments, restricted in their sphere of action, but independent of each other, and supreme within their respective spheres." Neither, the Court said, can intrude on or interfere with the other's actions.[12] By 1918, the Court was declaring that those powers "not expressly delegated to the National Government are reserved" to the states.[13] This was an expression of dual federalism at its height.

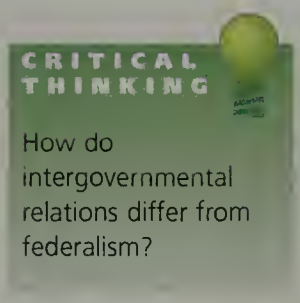
Grant-in-aid programs Federal appropriations that are given to states and localities to fund state policies and programs. The Morrill Act (1862) was the first instance of such a program.

Despite the Court's reliance on dual federalism during this period, the formal separation between the two levels of government was breaking down in the world of practical politics. The first step in this process was **grant-in-aid programs,** through which state policies and programs were partially funded or given other support. The Morrill Act (1862) gave federal land grants to states for the purpose of establishing agricultural colleges.[14] Later on, cash grants helped states with agricultural experiment stations, textbook programs for the blind, marine schools, forestry programs, agricultural extension services, state soldiers' homes, vocational schools, road construction, and a variety of other projects. By 1927 these grant programs were bringing state governments $123 million in national funds annually.[15]

Toward Cooperation and Local Participation (1930s–1950s)

Intergovernmental relations The style of federalism that recognizes the interdependence of Washington and state and local governments. The various levels of government share functions, and each level is able to influence the others.

The Great Depression of the 1930s significantly altered the relationship between Washington and the states. Demand for public services grew. At the same time, state and local governments faced extremely tight finances because tax revenues had fallen in the declining economy. The national government was expected and willing to respond. There was an explosion of new and cooperative programs in which the national and state governments shared an increasing number of functions. A new kind of federalism had emerged that recognized the interdependence of Washington and state and local governments. Called **intergovernmental relations,** or IGR, it is a system in which the various levels of government share functions, and each level is able to influence the others.



The emergence of intergovernmental relations was an important development in the history of American federalism. It meant that the formal and highly legalistic nature of federalism was being replaced by a more flexible and informal approach to nation-state relations. Furthermore, once interactions among various levels of government were treated as IGR rather than as federalism, the door was open for greater participation by many more actors on the federalism stage. Local and regional governments and even private and community groups could now find a role to play.

Cooperative federalism A period of cooperation between state and national government that began during the Great Depression. The national government began to take on new responsibilities, and state and local officials accepted it as an ally, not an enemy.

Under the new system, a variety of grant-in-aid programs were offered, covering a wide range of policy concerns. The number and size of these programs grew dramatically during this period, increasing from $100 million in 1930 to $6.8 billion in 1960.[16] The emergence of intergovernmental relations was the foundation for this period of **cooperative federalism.** Conflict between Washington and the states diminished as public officials worried less about what level of government performed certain functions and more about their specific program responsibilities. State and national officials began to see each other as "allies, not as enemies."[17]

At the heart of the system of intergovernmental relations were a variety of grant-in-aid programs that financed highways, social and educational projects,

Categorical, or conditional, grants-in-aid Money given to the states and localities by Congress to be used for limited purposes under specific rules.

and other programs. Many were **categorical, or conditional, grants-in-aid,** under which state governments received federal funding for specific purposes only if they met certain general requirements. For example, state highway departments were expected to operate in an efficient and businesslike fashion, free of corruption and undue political influence. Similar standards were applied to welfare programs. If states failed to meet those standards, support was withdrawn, or sometimes the program was taken over. Thus, during the Depression, Washington took charge of public assistance programs in six states where officials could not meet federal requirements. Public welfare programs in other states were closely watched to make sure that they were following federal rules.

Formula grants Grants given to states and localities on the basis of population, number of eligible persons, per capita income, or other factors.

Under other federal programs, states received **formula grants** based on population, number of eligible persons, per capita income, or some other factor. One of the largest of these grants, the Hill-Burton program, used a formula that was heavily weighted to favor states with substantial low-income populations. By 1986 more than $3 billion of Hill-Burton funds had been used to construct and modernize health care facilities throughout the United States.

Project grants Grants awarded to states and localities for a specific program or plan of action.

Project grants are awarded only after submission of a specific proposal for a project or plan of action. The Housing Act of 1937 was one of the earliest and largest of such programs. Under the provisions of that act, local governments could obtain funds to build public housing. By the 1960s, there were more than four thousand such projects, with more than half a million dwelling units. In many instances, the national government required recipient governments to provide a certain percentage of the funds needed to implement the programs. Among these **matching grants** were a program that provided aid to dependent children under the Social Security Act of 1935 and one that gave states $9 for every dollar spent to build interstate highways.

Matching grants Programs in which the national government requires recipient governments to provide a certain percentage of the funds needed to implement the programs.

Cities and other local governments also became participants in the federal system during this period. Before the 1930s, American cities were regarded as merely subdivisions of the states. Grants or other forms of support came from state capitals, not from Washington. In 1932, for instance, only the nation's capital received aid from the national government. By 1940, however, the situation had changed. That year, the national government handed out $278 million in direct grants-in-aid to local governments for a variety of public housing and public works programs. In the 1950s, the national government expanded the types of projects it would support to include slum clearance, urban renewal, and airport construction. By the start of the 1960s, local governments were receiving $592 million worth of direct grants.[18]

The Urban Focus (1960s–1970s)

The intergovernmental relations system continued to grow during the 1960s and 1970s, and by 1980 grant-in-aid programs to state and local governments had surpassed $85 billion. Starting in 1960, other notable changes also took place.[19] For example, grant systems expanded into new policy areas. The percentage of funds

devoted to highways and public assistance declined, and funding for programs in education, health care, environmental protection, worker training, housing, and community development increased significantly.

In a shift in the flow of funds, a growing number of intergovernmental programs were targeted at local, rather than state, governments. President Lyndon B. Johnson's Great Society policies included dozens of new and innovative grant programs with an urban focus. For the first time, community-based programs for feeding the urban poor, training the unemployed, and educating the children of low-income families received support. One important initiative, the Model Cities program, was designed to help cities develop projects addressing a variety of economic and social problems. In 1974, many of these and related programs were consolidated under community development grants. By 1985, the national government was disbursing nearly $5 billion directly to local governments through these programs.

CRITICAL THINKING

Should the national government be allowed to compel states and localities to carry out national policies?

Until the early 1960s, Washington used federal grants simply to help states and localities perform their traditional government functions. State and local governments might be asked to modify their personnel policies or their methods of bidding for contracts, but they rarely had to take on new policy responsibilities as a requirement for receiving federal funds. In contrast, the grant programs of the 1960s and 1970s were increasingly designed to involve these governments in achieving national policy objectives. States or localities that initiated new or special programs promoting national goals received substantial grants. The Model Cities program, for example, encouraged cities to institute programs for improving the quality of life for poor and low-income groups. In other instances, Washington threatened to reduce or cut off funding to governments that failed to change old policies or to adopt new ones that complied with national standards. It was during this period, for example, that the national government used the threat of withholding highway funds from states that did not lower their maximum speed limits to 55 miles per hour.[20]

Reforming and Devolving (1970s–1990s)

Inevitably, the rapid spread of grant programs and their requirements led to problems. Local recipients criticized federal officials for administering programs without regard for the unique circumstances and dilemmas they were facing. State officials complained that the national government ignored them in designing and implementing many new programs. Both state and local officials complained about the increasing number of strings attached to federal grants, especially policy mandates, which many recipient governments regarded as costly, irrelevant, and inappropriate. At the same time, members of Congress reacted impatiently to the poor coordination and cooperation in the massive intergovernmental relations system. As a result, there was almost constant pressure to reform the grant system.

CLOSER TO HOME



Governing Education

Among the governmental activities that touch the lives of almost every American is the public provision of primary and secondary education. This function is so important that it is the sole objective of 13,726 special-purpose districts. The number of school districts in each state ranges from 1 in Hawaii to 1,129 in California (Texas comes in second with 1,087). Fifteen of those districts serve more than 100,000 students, whereas 1,699 enroll fewer than 100.

A number of educational issues trouble many American citizens. The performance of public schools, for instance, presents a mixed picture. The dropout rate for high school students has declined overall since the 1970s; it started to go up again in 1990, but it seems to have reached a plateau in 1995. Verbal and math scores on the Scholastic Aptitude Test (SAT) declined for more than twenty-five years until 1994; since that time, they too have leveled off. According to the National Center for Education Statistics, average writing proficiency remained relatively stable for fourth-grade students between 1984 and 1996, while eighth-grade writing scale scores declined between 1984 and 1990, but returned to about their original level by 1996. Eleventh-grade scores were slightly lower in 1996 than in 1984. A 1994 national assessment of fourth, eighth, and twelfth graders' knowledge in reading, geography, and history showed mixed results. While 75 percent of the twelfth graders demonstrated proficiency in reading and 70 percent in geography, only 43 percent scored at a sufficient level on tests of historical knowledge.

The issue of educational equity also causes concern. At the heart of this issue is whether each student has access to the same educational resources as every other student. The problem is both sociological and constitutional. Sociologically, research has shown that students enrolled in poor, inner-city school districts do not receive the same quality of education as those who live in suburban areas. These disparities have reinforced racial and class divisions in American society—a fact that is disturbing to those who see education as the means of helping individuals overcome the barriers of discrimination and affordability. The ability of the suburbs to generate more funding than the central city and thus to have higher per-student spending violates the guarantee of equal protection of the laws that is part of the federal and many state constitutions. The courts are closely scrutinizing the methods of providing funding for education as litigants seek more money for underfinanced areas.

This issue raises two others: how education is funded and what the implications are for control of educational policy. Many school districts get a significant portion of their funds from local property tax revenues—a situation that has added fuel to the taxpayer rebellions that took place throughout the United States during the last two decades. Reliance on local taxes, moreover, gives some legitimacy to calls for unimpeded local control of school policies; the movement away from property taxes has lessened the justification for local control.

But there are also controversies when funds come from the state government's revenue sources (such as sales and income taxes), as questions arise concerning the appropriate formula for distributing the monies across the state. These controversies are growing more heated as states gain importance as funding sources (see Fig. 3.1) for local districts. In many states, too, statewide performance measures have also become a significant issue.

Much less threatening, though no less controversial, is educational funding from the federal government. The issue regarding these funds usually centers on the degree of control over its poli-

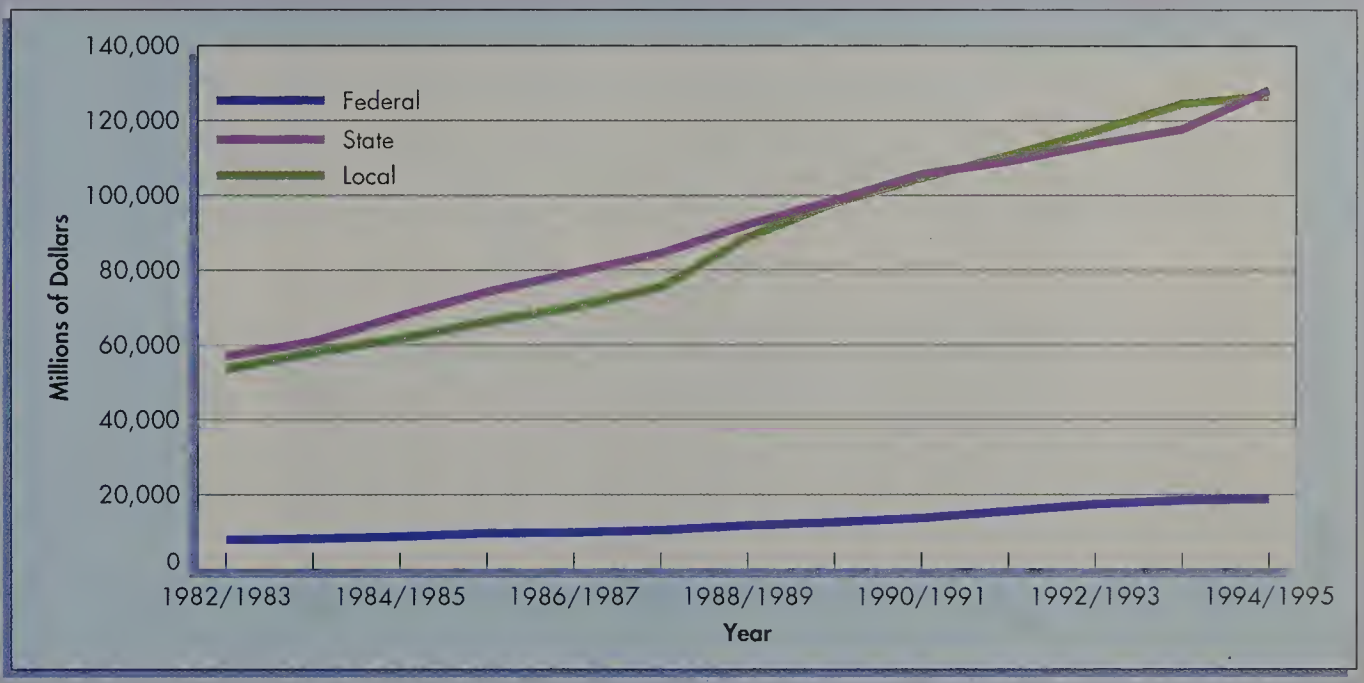


FIGURE 3.1
Funding for Elementary and Secondary Education

Although education issues are significant at the national government level, it is the state and local levels that continue to invest the most in this area.

Source: National Center for Education Statistics, *The Digest of Education Statistics 1998*, table 157 (http://nces.ed.gov/pubs99/digest98/d98t157.html).

cies that the local district can retain once it accepts federal monies. For example, Title IX of the Education Amendments of 1972 states that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." In the process of enforcing this act, the U.S. Department of Education has informed individual school districts that, with a few exceptions, all classes must be coeducational and that the standards for evaluating student performance must be adjusted accordingly.

This particular rule has been especially controversial in the physical education curriculum. Federal regulations, for example, permit segregation of girls and boys in elementary and secondary school classes where the major activity involves bodily contact (for example, wrestling or football). In physical education classes enrolling both sexes, the federal government allows teachers to form distinct male and female groups, but only if the separation is based on "objective standards of individual performance." Furthermore, where these or related standards produce an "adverse effect on members of one sex, schools must use appropriate standards that do not have such an effect. For example, if the ability to lift a certain weight is used as a standard for assignment to a swimming class, application of this standard may exclude some girls. The school would have to use other, appropriate standards to make the selection for that class." Regulations such as these often stir resentment and reaction from local school boards and

parents, who perceive them as too much interference in local matters.

Thus, although local in nature, education continues to be a complex intergovernmental public sector function—and a very controversial one in many parts of the country.

Sources: Ann O'M. Bowman and Richard Kearney, *State and Local Government*, 3rd ed. (Boston: Houghton Mifflin, 1996), chap. 15. Also visit the web site of the National Center for Education Statistics at http://nces.ed.gov/edstats/ for up-to-date reports and statistics on education in the United States. For information on Title IX requirements, see http://www.ed.gov/offices/OCR/ocrttl9.html.

Responding to pressures for an increased role for state and local officials, Washington took a number of steps designed to loosen its control over grant programs and to enhance state and local authority. During the early 1970s, for instance, the federal government provided funds to support the formation of local and regional **councils of governments.** These associations of local governments helped their member governments contend with such common problems as coordinating local applications for federal grants. In addition, President Johnson and his successor, Richard M. Nixon, reorganized the administration of the grant system, increasing the power of federal regional offices in order to ease the burdens on both state and local governments.

Councils of governments Local and regional bodies created in the early 1970s with federal funds to help solve problems such as coordinating applications for federal grants.

In two additional reform efforts, the national government introduced new funding systems designed to further reduce its control and make procedures more flexible. Most of the programs established before this time were based on categorical, or conditional, grants, in which money given to the states and localities was to be used for limited purposes under specific rules. In the mid-1960s, however, Congress introduced block grants. **Block grants** were a way of consolidating categorical grants in a given area so that the recipients would have greater freedom in their use of funds and so that paperwork would be reduced. By 1974, there were seven major block grants covering such areas as health, education, and other social services. These grants did give state and local officials greater discretion over programs and freed them from some annoying mandates attached to categorical grants. Nevertheless, in financial terms, they represented only a small portion of the total amount of federal aid flowing to states and localities.

Block grants Money given to the states by Congress that can be used in broad areas and is not limited to specific purposes, as categorical grants are. A means introduced in the mid-1960s of giving states greater freedom.

The other new form of federal aid was called **general revenue sharing.** This small but innovative grant-in-aid program had no significant conditions attached to it. State and local governments received funds according to a complex formula based on population and related factors. In the late 1970s, the program was modified considerably and its funding was reduced. By 1988 it had disappeared from the intergovernmental system.

General revenue sharing A small but innovative grant-in-aid program, used in the 1970s and 1980s, that had no significant conditions attached to it. State and local governments received funds according to a formula based on population and related factors.

The late 1970s and early 1980s produced major changes in intergovernmental relations. Most obvious was the reduction in federal funding to states and localities through grants-in-aid. Grant money began to decline in 1979, but the most significant drops occurred during Ronald Reagan's first years in office. It was nearly a decade before federal aid returned to its pre–Reagan administration levels.[21]

Denver International Airport

During the 1950s and 1960s, many cities built major airports with the help of large grants provided by the federal government. However, the controversial and expensive Denver International Airport, opened in 1995 after much delay, was the first major facility to be built since the early 1970s.



In addition to these reductions in federal funding, Reagan also attempted a major overhaul of the intergovernmental system. He formally proposed to Congress that many government functions be returned to the states. In exchange, the national government would assume most public welfare programs. When that strategy failed, Reagan administration officials tried to bring about changes by adjusting the way in which grant-in-aid programs were administered. These efforts had a major impact on the federal system.[22]

At the same time, Congress was working toward consolidating more categorical programs into broad block grant programs. During the first half of the 1980s, Congress converted dozens of categorical programs into about a dozen block grants.[23] Despite these efforts, hundreds of categorical grant programs remained on the books. By 1988—the last year of the Reagan administration—the national government was spending an estimated $116 billion on grants-in-aid to states and localities.[24]

There is little dispute, however, that the Reagan administration significantly changed the direction of intergovernmental relations, at least for the short term. Although the absolute amount of federal dollars going for grant-in-aid programs increased through most of the 1980s (from $91.3 billion in fiscal year 1980 to $135.3 billion in 1990), the total amount in "constant dollar" terms (adjusted for inflation) declined during most of that period, actually dropping from $155.7 billion in 1980 to $144.7 billion in 1990 (in 1996 dollars). Only after Reagan left office did grant expenditures increase in both absolute and constant terms.

More important, during this period states and localities were becoming less dependent on federal dollars for carrying out their work. For example, in 1978,

26.5 cents of every dollar spent by state and local governments came from the national government. By 1990, however, only 17.9 cents of every dollar spent by states and localities could be linked to a federal grant-in-aid. As one observer put it, the Reagan years represented the years of "fend-for-yourself" federalism.[25]

The Bush administration launched no major initiatives in the area of intergovernmental relations. Nevertheless, two factors emerged that gave cause for concern. First, the combination of federal funding cutbacks and an extended economic recession created fiscal crises in states and localities throughout the nation. Because many states and localities were required to have balanced budgets, the fiscal crises of the early 1990s had an immediate impact and could not be resolved through government borrowing. States from Connecticut to California were forced to take unpopular steps, cutting budgets and raising taxes. However, the flow of federal grant-in-aid money to states and localities picked up once again, and by the time Bush left office the amount had increased from $121 billion in fiscal year 1989 to $193 billion in fiscal year 1993.

A second factor shaping intergovernmental relations during the early 1990s was the growing number of policy pressures and federally mandated costs that states and localities had to shoulder. The policy pressures came primarily from the White House as President Bush made education and a war on drugs two of his top priorities. Although Bush called for major reforms and initiatives in these specific areas, he made no request for additional federal funding for the states and localities that would have to carry out many of the policy changes he was suggesting. Thus, while holding conferences and making speeches on the need for local schools to engage in costly educational reforms, President Bush did not support funding for any major new or special programs to accomplish those objectives. Similarly, his much-touted "War on Drugs" required nearly $500 million in federal funds, but most were earmarked for federal law enforcement efforts and aid to foreign countries. State and local officials complained bitterly that they needed more money if they were to do their part. After all, they argued, it was the states and localities that had to deal with drug use and its consequences.

Congress was also a source of problems. Members offered and passed well-intentioned legislation requiring state and local action but failed to deal with the associated costs of the new programs. In addition to the previously passed requirements for environmental cleanup, Congress in 1990 passed a much-heralded Americans with Disabilities Act, which included provisions for greater public access to services, transportation facilities, and so forth that would require millions of dollars in additional state and local expenditures for years to come.

Unfunded mandates
Required actions imposed on lower-level governments by federal (and state) governments that are not accompanied by money to pay for the activities being mandated.

Known as **unfunded mandates,** these unfinanced or underfinanced burdens on states and localities became a major issue in national politics and policymaking. By 1994, greater sensitivity had developed concerning these burdens. The debates on legislation, such as that dealing with clean water, increasingly included consideration of those responsibilities and who should pay for them. A bill addressing the issue of unfunded mandates—one part of the Republican party's "Contract with America" agenda that the Clinton administration supported—became the first substantive item passed by the 104th Congress in

January 1995. Clearly, the days were gone when Congress could impose mandates on states and localities without addressing the critical problems those requirements caused (see the discussion about Congress that follows).

President Clinton was also sensitive to the growing demands being made on states and localities when he came into office in 1993. As governor of Arkansas for twelve years, he had developed a national reputation as an innovative leader who understood and appreciated the role of states in the federal system.[26] After less than two weeks in office, Clinton held a meeting with the nation's governors to hear their complaints and suggestions. While his administration did not propose any major reforms of the intergovernmental system, Clinton did establish a policy that permitted federal officials to loosen program requirements in order to allow states and localities greater flexibility to innovate. This approach of giving states and localities more room to determine the policies they were to enforce became part of a more general movement toward devolution in the intergovernmental relations system. **Devolution** involved having the national government turn over more functions with greater responsibility to state and local governments. During the Clinton years, the federal outlays for state and local grants continued to climb, even as welfare programs were reformed and other responsibilities were devolved (see the discussion below and in Chapter 14). By fiscal year 1999, the national government was spending $267 billion on those grants—nearly double what it had been sending to states and localities a decade earlier.

Devolution A term indicating the effort to give more functions and responsibilities to states and localities in the intergovernmental system.

Restoring Dual Federalism (2000 and Beyond?)

For many decades, the U.S. Supreme Court seemed to be only a "bit player" on the federalism stage. Starting in the late 1980s, however, observers at the Supreme Court began to notice an emerging trend in the cases and decisions being heard by the nation's top judicial body. It was well known that the chief justice, William H. Rehnquist, had long favored having the Court reconsider that body's propensity to favor a nation-centered view of federalism. Over the years, he had been able to establish a slim majority bloc on the Court that tended to lean in the direction of reviving a more state-centered view that took the constitutional concept of "state sovereignty" seriously. The influence of that majority became evident in 1999, when the Court issued several decisions that indicated that it would play a major role in reshaping the federalism of the future.

The Court's efforts can be traced to two landmark decisions rendered several years earlier. In the 1992 case of *New York* v. *United States* (505 U.S. 144), the Supreme Court held that the national government could not "simply compel" a state to take policy actions. In this case, New York found itself unable to live up to provisions of a congressional act mandating that it establish a site for low-level radioactive waste disposal within its borders, The federal government's deadline passed, and New York found itself threatened with legal action unless it assumed responsibility for regulating the waste material in the manner prescribed by the

law. In this case, the Court reasserted an earlier principle of federalism that Congress may not simply "commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." Four years later, in a case titled *Seminole Indian Tribe of Florida* v. *Florida* (517 U.S. 44), the Court declared unconstitutional a law that authorized individuals to sue state governments in federal court for violations of national laws. Other cases followed. In 1997, the Court overturned a law that required local law enforcement officials to implement provisions of a federal handgun control law (*Printz* v. *United States,* 521 U.S. 98(1997).

The 1999 cases, however, indicated that a more significant shift was in the making. In one case, the state of Florida was held to be immune from lawsuits brought against it under provisions of a federal law dealing with patent rights and false advertising. In another, the Court held that the state of Maine was not subject to federal Fair Labor Standards legislation. In January 2000, the Court went even further, specifically exempting states from provisions of federal laws aimed at preventing age discrimination (*Kimel* v. *Florida Board of Regents,* 120 U.S. 631).

When combined with trends toward reassertion of the authority of states and localities in the federal system, these Supreme Court decisions indicate that the federalism stage is in the process of being reset once again. As in the past, these changes will have an impact on the roles that different actors play in the ongoing federalism drama.

The Actors of American Federalism

Today's federalism is an intergovernmental relations system involving a cast of hundreds of agencies, thousands of political and administrative personnel, and millions of citizens who depend on government for daily public services. In short, the underlying story is that the American federal system has grown wider and deeper as interactions among the different levels of American government have increased and become more complex. Here we briefly describe the many actors who occupy the modern stage of American intergovernmental relations.

National Government Actors

Formally, there is only one national government in the American federal system. In practice, however, dozens of national-level actors play out daily dramas on the intergovernmental relations stage.

The Supreme Court. In the two centuries of American federalism, no national institution has been more important than the U.S. Supreme Court. We have already seen how in *McCulloch* v. *Maryland* the Court helped establish the

national government's dominant role and how the post–Civil War Court supported the notion of dual federalism.

As noted above, until recently Supreme Court rulings seemed to be reducing the role of the states as effective policymakers.[27] In the late 1980s, however, some Supreme Court decisions indicated a growing willingness to give state and local governments more power to shape public policies on a wide range of issues, from abortion rights and the right to die to local campaign financing and the use of sobriety tests for drivers suspected of drunk driving. In other areas, such as civil rights, the Court was more reluctant to defer to states, but recent cases indicate that the Court is now willing to give the states greater flexibility to deal with those sensitive issues as well.

Whether one accepts or disputes the wisdom of individual Supreme Court rulings, there is little doubt that through these and other cases, the Court has helped shape and direct the American federal system.

Congress. Although presidents often receive credit for major policy innovations, Congress has always played a central role in the evolution of the federal system. This has been especially true in the past forty years, during which Congress has increased its authorization of grant programs.

Some students of Congress point to strong incentives for members of the House and Senate to create and fund federal grant-in-aid programs for state and local governments.[28] These programs give almost every state and local government an opportunity to obtain federal funding. Therefore, members of Congress can claim credit for passing and supporting their constituents' grant applications. As a result, even fiscally conservative members of Congress often find it hard to avoid supporting requests for new and larger intergovernmental grant programs. "Philosophically, I have not been one to jump rapidly to new programs," commented one member of the House of Representatives from Virginia. "But if programs are adopted, my district is entitled to its fair share. And I do everything I can to help—if they decide to apply for aid."[29]

CRITICAL THINKING

Are we in the midst of a major change in American federalism?

The White House. American presidents have proposed new federal grant programs and worked to reform the intergovernmental system. Johnson's Great Society agenda, for example, emphasized the Model Cities program and other new and innovative projects. As previously noted, the administrations of both Johnson and Nixon strove to improve the coordination of federal grant programs. In the late 1970s, President Jimmy Carter issued several executive orders aimed at simplifying the complicated grant application and reporting procedures, which by then had grown very complex.

Other White House initiatives sought to expand the role of state and local governments in the federal system. Johnson called for the establishment of a "creative federalism" involving a partnership of all levels of government as well as community and private organizations. Nixon proposed a "new American Revolution" that would give "power to the people" by turning many national domestic programs back to state and local governments. Reagan announced a

"new federalism" that would have revamped the intergovernmental grant system over a ten-year period. Clinton ordered members of his administration to administer programs that allowed states to experiment with innovative ways of dealing with the nation's health and welfare problems. Some changes in the American federal system emerged from each of these presidential initiatives, but none led to radical alterations in intergovernmental relationships by themselves. Rather, it has been changes in specific programs that have had the greatest impact on the federal system.

For example, when he ran for the presidency in 1992, Bill Clinton promised that if elected he would bring about "an end to welfare as we know it." On August 22, 1996, he signed into law perhaps the most sweeping changes in welfare programs since the early 1960s. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 significantly altered the system of assistance to the needy, which had generated criticism from both sides of the political spectrum (see the discussion of welfare policy and reform in Chapter 14, on domestic policy). The new law was aimed toward ending the cycle of poverty and dependence that had caused concern among even the most ardent supporters of government assistance to the poor. But for those who administered the vast web of federal programs that had developed over several decades, the law represented even more important changes. In many respects, the new welfare law meant an end to the intergovernmental relations system as they had known it for more than half a century.

Before the passage of the reform legislation in 1996, assistance to the poor was effectively a set of national programs administered by the states. Thus, despite the significant role played by the states, there was an unmistakable national flavor to the welfare system. As in many other policy areas—from education to environmental protection to highway construction and maintenance—states and localities had taken on significant financial and administrative burdens but were severely limited in deciding on such matters as who was eligible for the programs or how the funds would be spent. After the 1996 reforms supported by the Clinton administration, the role of the states in welfare policy was radically transformed as they took on most of the responsibility for determining the kinds of assistance programs they would administer.

The Federal Bureaucracy. Perhaps the greatest increase in the numbers of national-level actors on the intergovernmental stage has been in the bureaucracy, especially in such agencies as the U.S. Departments of Housing and Urban Development, Health and Human Services, Agriculture, Interior, Transportation, and Education. Some bureaucrats in these agencies determine the eligibility of state and local grant applicants and the appropriateness of their proposals. Others monitor the use of grant-in-aid funds and constantly consult with other actors in the intergovernmental system about the need to modify specific grant programs.

The emergence of these intergovernmental bureaucracies has added a new dimension to U.S. government. On the one hand, the bureaucrats in these agencies are expected to disburse funds and assist state and local government officials

in making effective use of those resources. On the other hand, they are expected to ensure that state and local programs meet federal standards and live up to federal requirements. In other words, the growing federal bureaucracy assigned to intergovernmental programs is supposed to both facilitate the grant process and regulate state and local grant recipients. These bureaucrats are actors on the intergovernmental stage with dual, and often contradictory, roles (see Chapter 12, on the bureaucracy).

The recent turn toward devolution and program reform—especially in welfare—has both reduced and changed the role of the federal bureaucracy in the intergovernmental system. Nevertheless, in many areas, such as environmental protection and education, it remains a pivotal player on the federalism stage.

States in the Federal System

Even during periods when the national government has seemed to be playing the lead role in the federalism drama, the states have remained important and active participants in the intergovernmental arena. Through all the various changes that have taken place, they have retained significant responsibilities in the areas of education, public health, criminal justice, and the regulation of gambling and liquor. They also play major roles in enforcing environmental, safety, and health regulations. For years they have been the chief regulators of public utilities and savings banks.

States empower and determine the organization of local governments. Legally, local governments are created by the actions of state legislatures. Thus, theoretically, they can be legally terminated by state officials. In practice, however, states rarely use this life-and-death power over the legal existence of local governments, although they have on occasion eliminated entire city governments through legislative action. City governments cannot impose their own sales or income taxes unless state laws grant them that authority. There are examples of state governments taking over or shifting local government functions because of severe financial problems or unbridled corruption and inefficiency. In Missouri, for instance, the state assumed control of the police forces in both Kansas City and St. Louis earlier this century because of widespread corruption.[30] And in the 1970s, the state of New York helped New York City deal with its critical financial problems by assuming responsibility for all four-year colleges in the city's municipal university system. In recent years, some states have taken control of inner-city school districts that were failing to perform up to state standards.

The states have also made their mark through creative and innovative approaches to solving public problems and meeting challenges; in fact, the states have often led the way. For example, Wisconsin regulated railroads and democratized the political nomination process long before such policies were adopted nationally. California led the way in developing building-construction standards to help reduce energy costs and in establishing auto-emission standards to help reduce air pollution. Such state-initiated innovations are common in almost every major area of domestic policy.[31] In discussions about welfare and education reform, one of the strongest arguments for giving more responsibility to the

states was their ability to come up with novel and effective programs, even in the face of budgetary cuts.[32]

Most important today, however, is the states' pivotal role as liaison in the intergovernmental relations system. As noted earlier, the national government uses state agencies to administer its grants in a wide variety of policy areas. Furthermore, local governments rely on state officials for technical assistance, as well as for financial aid. In short, state governments may be the key link—not necessarily the weak link—in the U.S. federal system.[33]

CRITICAL THINKING

Are states really necessary? Or are they an anachronism that should be eliminated or replaced by regional governments?

The role of the states in the intergovernmental relations system is always changing. When their influence wanes, students of American government tend to pronounce their doom. According to one observer in the 1930s, the American state was "finished." He said, "I do not predict that the states will go, but affirm that they have gone."[34] At other times, the states have been so important that one can hardly imagine how American government might operate without them.[35]

What accounts for these gains and losses in power? First, the states' authority changes dramatically as the Supreme Court shifts between strict and flexible interpretations of the Constitution. As noted above, the current Court majority has signaled its intent to decide in favor of a state-centered view of federalism when issues come before it. Second, the states' role depends on the actual political power they can mobilize. During certain periods of American history, state officials have managed to exercise considerable influence in Washington through their representatives in the House and Senate. At other times, state governors and legislators have carried relatively little weight in either the White House or the halls of Congress.

Third, public opinion plays a role in determining the extent of states' influence. Although state governments have always been important policymakers, the American public has not always looked to the states for solutions to its collective problems. At times the public has depended on local governments, and more recently it has expected Washington to help. The question of public support for state government is complicated by citizens' attitudes toward their state governments, which tend to vary over time. As we have seen, over the past twenty-five years, public opinion regarding the capacity of states and localities has become more positive.

Fourth, the role of the states in the federal system depends on their administrative capabilities. If states lack the administrative resources and managerial talent to deliver the goods and services demanded by the public, then they cannot play a major role for very long. Most observers believe that state administrative capabilities improved markedly during the 1970s and 1980s.[36] Ironically, much of that improvement came about as a result of pressures imposed by Washington through the requirements attached to grant-in-aid programs.

Local Governments

When you think of local governments, you probably picture city halls and county courthouses occupied by small councils of elected officials and a few offices

occupied by record-keeping clerks, who collect taxes and issue dog tags and automobile licenses. American local governments are much more than that, however, and their role in the intergovernmental relations system is a major one.

As noted earlier, all local governments are creations of the individual states. Under the formal provisions of the federal system established in the Constitution, governmental powers are divided between the national government and the states. Local governments, in other words, have no constitutional standing. Their very existence and legal authority are derived from legal charters granted to them under state laws.

General service governments Local governments, such as counties, municipalities, and townships, that provide a wide range of public services to those who live within their borders.

Special district governments Local governments that deal with one or two distinctive government functions, such as education, fire protection, public transportation, or sewage treatment.

In practice, however, Americans have always treated local governments as if they had separate and legitimate standing in the federal system.[37] As of 1997, there were 87,453 local governments in the United States. This figure includes county (3,043), municipal (19,372), township (16,629), and other **general service governments,** which provide a wide range of public services to those who live within their borders. It also includes 13,726 school districts and 34,683 other **special district governments** dealing with one or two distinctive government functions, such as fire protection, public transportation, or sewage treatment. Each of these local governments can participate in some way in the intergovernmental relations system—and a great many do.[38]

The problems of local governments are not all alike because those governments reflect a variety of physical, social, cultural, political, and economic conditions. Between the extremes of small, rural, sparsely populated townships and huge, densely populated metropolitan areas are cities, towns, counties, and dis-

Unfunded Mandates

The Americans with Disabilities Act, passed in 1990, required that all public buildings be made accessible to all, but it failed to provide direct funding to help states and localities cover the costs.



tricts of every conceivable size and shape. To understand the distinctive role played by local governments in the intergovernmental system, we need to perceive their differences.

Of particular importance are the wide economic disparities among various local governments. These differences in wealth influence the way community leaders approach the intergovernmental system. For example, according to recent estimates, the per capita income in Laredo, Texas, is less than half the per capita income of Tulsa, Oklahoma, or Bremerton, Washington, and barely one-third the per capita income of residents of Naples, Florida. A city such as Laredo or Newark, New Jersey, would want more federal aid programs targeted at job training, public housing, public health, and similar needs of the urban poor. Naples's government, in contrast, would seek more federal funding for new highways, construction of new recreation facilities, and other amenities.

Not only the economic status of the citizenry but also their age and ethnic background bear on local problems and needs. The interests and concerns of Bradenton, Florida, are different from those of many other communities because more than a fourth of Bradenton's residents are over sixty-five years old. In Bakersfield, California, a fourth of the population is fourteen years old or under. Thus, the people of Bradenton would seek federal and state help in funding special programs for the elderly, whereas the citizens of Bakersfield would be more interested in state and federal aid for elementary and secondary school programs. Ethnic concerns can also be a factor. The very large Hispanic community in El Paso, Texas, is relevant to what that city wants from Washington. The intergovernmental relations system, for instance, can offer El Paso's schools funding for bilingual education programs. Such funds might not be available if the schools had to depend on local resources.[39]

These and other factors make it difficult to generalize about the roles played by local government actors on the intergovernmental relations stage. Nevertheless, local officials have undoubtedly become major participants in the federal system during the post–World War II period and will remain important. They exercise much of their influence through local members of Congress, who are responsive to the needs of the constituents back home. They also exert influence through membership in intergovernmental lobbying groups, which make up an increasingly important set of actors in the federal system.

The Intergovernmental Lobby

Intergovernmental lobby The many individuals and groups that have a special interest in the policies and programs implemented through the growing intergovernmental relations systems. These lobbyists represent private, consumer, and business groups.

The **intergovernmental lobby** includes individuals and groups that have a special interest in the policies and programs implemented through the growing intergovernmental relations system (for more on interest groups, see Chapter 8). Some of these lobbyists represent private interests that hope to benefit from or expect to be harmed by some intergovernmental program. For example, environmental lobbyists push for effective state and local enforcement of national air quality and water quality standards. Other intergovernmental lobbyists support social regulations to strengthen automobile safety, consumer pro-

tection, or occupational health. Representatives of businesses seek to reduce these regulations and to weaken state and local enforcement.

Lobbyists for the poor and the disabled are also active on the federalism stage. In many instances, their goal is to ensure federal funding of social welfare and educational programs. In June 1994, for example, the National Associations of Community Health Centers (NACHC)—representing 2,000 medical clinics that serve the health-care needs of nearly 7 million poor Americans—sued the Clinton administration to halt efforts to allow state governments to experiment with the way they provide health care to the poor through Medicaid, the federal program designed to provide health care for America's poor.

In their lawsuit, NACHC officials contended that the waivers being granted by the Clinton administration were illegal because the experimental programs effectively reduced the health care provided to Medicaid recipients in those

Federal Aid for Public Works

Some local public works projects require significant support from all levels of government. With federal government support, the State of Massachusetts launched the Central Artery Project in 1982 to deal with the Boston area's traffic problems. Known locally as "The Big Dig," the project is a massive and costly undertaking that is scheduled for completion in 2004.



states.[40] By bringing suit in federal court, the NACHC was not only taking formal legal action on the federalism stage but also drawing attention to an intergovernmental issue that has an impact on millions of Americans.

Public-sector interest groups A lobby that represents the interests of elected officials and other major government actors involved in the intergovernmental relations system. An example is the National Governors' Association.

In recent years, a new kind of intergovernmental lobby has emerged: **public-sector interest groups,** which represent the interests of elected officials and other major governmental actors involved in the intergovernmental relations system. For example, the National Governors' Association and the U.S. Conference of Mayors are two of the most active groups in Washington that lobby on domestic policy issues. The American Society for Public Administration and the International City and County Management Association represent the interests of public administrators and other nonelected public-sector workers. Still other groups—such as the National League of Cities, the National Association of Counties, and the Council of State Governments—lobby on behalf of their own government jurisdictions.

A growing number of individual governments also hire lobbyists to represent their interests. In 1969, Mayor John V. Lindsay of New York City took the brash step of opening a Washington, D.C., office to lobby on behalf of the Big Apple. Two decades later, New York City had eight full-time lobbyists looking after its interests in Washington. Similar offices have been opened by just about every major government in the United States.

The increase in the number of public-sector interest groups, as well as their political influence, paralleled the growth of the intergovernmental system itself during the 1960s and 1970s.[41] In recent years, however, the reduction in federal aid for states and localities has led several of these public-sector interest groups to reconsider their priorities and roles. Many have cut back their Washington-based staffs and focused more attention on lobbying state legislatures or on providing technical assistance to their members who must adapt to Washington's reductions in grant-in-aid funding.[42]

The Role of the Citizen

The largest group of actors on the intergovernmental stage is the citizens of the United States—the intended beneficiaries of all the policies and public services of American government. Hardly an area of American domestic policy remains untouched by the intergovernmental relations system, yet many Americans remain unaware of the role of intergovernmental relations. Every person who drives a car on the highways, attends public schools, uses city buses, or receives emergency care at the community hospital benefits from intergovernmental programs.

Of course, the American people are more than just the beneficiaries of the many goods and services provided through the intergovernmental system. As taxpayers, citizens also pay for those programs, often indirectly. Most intergovernmental programs are paid for with general tax revenues collected by the various levels of government. However, a portion of the money comes

from special trust funds established for a particular program. For instance, each time you purchase a gallon of gasoline for your car, you pay a special federal tax. That tax is deposited in the Highway Trust Fund, which is used primarily to pay for the construction and maintenance of interstate highways and other roads.

Most important, the American people generate the demand for intergovernmental programs. The pressures that the public can bring to bear on the system are most evident when popular grant programs are threatened with major cuts or when a community faces a crisis that cannot be handled with local resources. Consider, for example, social service programs for the elderly or handicapped. When members of the Reagan administration suggested cutbacks in social security in 1982, the public reacted so negatively that President Reagan felt compelled to promise never to cut those benefits. And when a crisis or tragedy strikes some community—when a tornado or flood devastates a small town or when buried hazardous wastes contaminate a community's soil and water supply—the call for action goes out to Washington as well as to the state capitol and city hall. These kinds of actions generate intergovernmental activity.

Many Dramas on the Stage

Obviously, the federalism stage would be extremely crowded if all the actors were involved at the same time. That rarely, if ever, happens, for there are few issues that interest everyone in the federal system. More typically, the dramas of the federal system are played out on different parts of the stage by relatively few actors. For example, before 1974, the money in the Highway Trust Fund—raised through federal taxes on gasoline purchases—was used exclusively to build and maintain interstate and other federal highways. For years, however, a coalition of environmentalists and local officials from major urban areas had been pushing Congress to divert some of those funds to building and maintaining urban mass transit systems. Though the political battle was not highly publicized, it was fiercely fought in a corner of the intergovernmental stage. Finally, Congress passed the National Mass Transportation Act of 1974, allowing state officials to spend some of the Highway Trust's funds on mass transit. By 1991, instead of arguing over whether trust fund revenues would be spent on mass transit, the congressional debate focused on what portion should be devoted to highways and what portion to other transportation needs.

Similar instances of intergovernmental politics and policymaking take place daily in Washington, in state capitols, in county courthouses, and in city halls. In this sense, the story of the issues surrounding welfare reform and highway policies are typical of today's federalism. Who is involved in those dramas on the various sections of the intergovernmental stage depends to a great extent on what is at stake.

MYTHS IN POPULAR CULTURE





The Political "Image" of the South

Throughout this chapter, we have noted that federalism can be understood as a stage upon which differences among the states are played out. But it is not the only such stage. Modern popular culture also reflects America's regional differences, especially those related to the division between northern and southern states, in a variety of forms and formats. Despite the natural cleavages that separate Californians from New Englanders and westerners and midwesterners from easterners in the United States, it has been the north/south differences that have drawn the public's attention for many decades. Most often it has been the American South that has most fascinated us, and we have seen that region portrayed in a variety of ways over the past century, from a region victimized and embittered after the Civil War to a hostile place where bigotry and racism run rampant.

In 1915, D. W. Griffith released *Birth of a Nation,* arguably one of the great cinematic achievements of the silent film era—but also one of the era's most controversial movies, given its extremely sympathetic narrative about how whites had suffered during the Reconstruction era. In 1939, it was the image of a defeated South pillaged and plundered by Northern forces that emerged from the classic movie *Gone with the Wind.* From the 1940s through the 1950s, films portrayed a culturally distinct South, stressing the region's innocence and backwardness. This image had turned quite negative by 1960, when the Broadway hit play *Inherit the Wind* was made into a movie. A fictionalization of the famous "Scopes Monkey Trial," held in Tennessee during the 1920s, it pictures the South as a bastion of backward fundamentalist thinking—more to be pitied than hated.

The image of a South confronting its racism has also been a subject for moviemakers. In the 1967 film *In the Heat of the Night,* Rod Steiger portrayed a local police chief who grudgingly accepts the reluctantly given help of a black police detective from Philadelphia (Sidney Poitier). Both the film and Steiger won Academy Awards, and the show's plot later turned up as a television dramatic series. In 1988, director Alan Parker revisited that era and image of the South in a critically acclaimed movie, *Mississippi Burning.* The film dramatized the 1964 FBI investigation into the disappearance of four civil rights workers.

In the realm of popular music, rock singer Neil Young wrote two songs promoting the image of the racist South. In the late 1960s, his "Southern Man" lyrics spoke of southerners in terms that conjured up images of cracking whips and lynch mobs. Although less simplistic in its imagery of southerners, his 1972 song "Alabama" still pointed an accusatory finger at the region as the home of racists who needed to change their ways. As if to say "enough is enough," the members of one southern band, Lynyrd Skynyrd, wrote a musical response in their 1974 hit song, "Sweet Home Alabama":

> Well I heard mister Young sing about her
> Well, I heard ole Neil put her down
> Well, I hope Neil Young will remember
> A Southern man don't need him around anyhow.
> . . .
> In Birmingham they love the governor
> Now we all did what we could do
> Now Watergate does not bother me
> Does your conscience bother you?
> Tell the truth.

Images such as these are directly related to the changing myths of American government and politics in the federal arena. Just as southern politicians have emerged as leading "liberals" in the Democratic party (e.g., Jimmy Carter and Bill Clinton), so has the popular image of a racist, ignorant, and backward South significantly changed. The first indications of that shift came

during the late 1970s with the shift toward a cinematic image of a "New South" comprising hard-working blue-collar Americans. During the late 1970s, for instance, Burt Reynolds starred in two box office hits—*Gator* and *White Lightning*—in which progressive "New South" southerners worked with federal agents to triumph over corrupt "Old South" southerners, represented by the local sheriff and other officials. The music also changed, with southern bands like Lynyrd Skynyrd becoming part of the mainstream of the popular sounds that emerged during the 1980s.

"Sweet Home Alabama" words and music by Ronnie Van Zant, Ed King, and Gary Rossington. Copyright © 1974 by Duchess Music Corporation and Hustlers, Inc. Duchess Music Corporation is an MCA Company. International copyright secured. Used by permission. All rights reserved.

Conclusion: The Myths Versus the Dramas

The image of intergovernmental relations being played out on different parts of the federalism stage poses a challenge to the widely held myths of national government weakness and national government dominance. Both myths oversimplify the reality of intergovernmental relations. On closer examination, intergovernmental relations emerge as a complex system in which the roles of all governments—national, state, and local—change over time depending on a variety of political, economic, and social factors. The role that national government plays depends on the issues and circumstances surrounding the federalism stage at the time the curtain rises. National government officials fill important and often highly visible roles on this stage, but so do state, local, and even private actors.

Of course, the drama metaphor used in this chapter has its shortcomings, for the American federal system today is too complex to be summarized in such an image. To call intergovernmental relations merely a staged play or to say that there is a trend toward or away from national government domination distorts an ever-changing reality. Rather, the American federal system is a flexible arrangement among different levels of government; it adapts as problems and circumstances change. In that sense, American federalism is very much like the constitutional system from which it emerged.

Summary

1. Relationships among national, state, and local officials are becoming increasingly complex. This growing complexity is central to the changing nature of the American federal system.
2. The evolution of the American federal system has been shaped by the distinctive challenges that have faced the United States during the past two centuries. Out of that evolution has emerged

a complex system of intergovernmental relations based on a variety of grant-in-aid programs. The intergovernmental relations system has been characterized by periods and episodes of conflict and cooperation.

3. The dynamics of American federalism are best understood as a number of dramas being played out on various parts of the intergovernmental stage by several groups of actors, including the courts, the Congress, the White House, the federal bureaucracy, local and state officials, intergovernmental lobbies, and the American people.

4. The complexities and dramas of American intergovernmental relations challenge simplistic views of U.S. federalism that characterize it in terms of how much influence the national government has.



Net Work

To appreciate the role of federalism in our constitutional system, you should familiarize yourself with the web sites of state and local governments. As an exercise, find the web site for your home state, your home town, or the city where you now reside. Every major airport maintains a web site. Find the web site for the airport nearest your college. How useful or informative are these sites?

Do you want to know what is going on in the intergovernmental relations arena?

- One of the most widely read periodicals among state and local officials is *Governing* Magazine **(http://www.governing.com),** published by Congressional Quarterly, Inc. The magazine also maintains a list of useful links related to state and local government concerns at **http://www.governing.com/govlinks.htm.**
- The Urban Institute **(http://newfederalism.urban.org/),** a well-respected Washington think tank, has been monitoring changes in federal social and health policies that involve states and localities.

A number of papers exploring the nature and future of federalism in the United States, Canada, and Mexico can be found at **http://www.northamericaninstitute.org/fed96/fedcon.html.**

Some people advocate the application of the federalist model to international relations. See the web site of the World Federalist Association at **http://www.wfa.org/.**

CHAPTER 4

The Heritage of Rights and Liberties

- Applying the Bill of Rights to the States
- The First Amendment Freedoms

Freedom of Speech: Changing standards and symbolic speech
Freedom of the Press: Prior restraint, libel, and obscenity
Freedom of Religion: Establishment and free exercise of religion

- Due Process and Crime

Right to Counsel: Providing attorneys for defendants
Searches and Seizures: Applying the exclusionary rule
Cruel and Unusual Punishment: Proportionality, the death penalty, and victim impact statements

- Privacy

Abortion
Doctor-Assisted Suicide

- Equal Protection of the Laws

The Continuing Struggle Against Racism: Segregation in public education and public accommodations, the Civil Rights Act of 1964, and voting rights
Sex Discrimination: Paternalism, women in the work force, and sexual harassment
Emerging Issues of Discrimination: Equal protection and sexual orientation; equality and citizenship status
Affirmative Action: Changing Court positions

- Conclusion: Absolutes and Qualifications

MYTH & REALITY

Is liberty, as defined by the U.S. Constitution, absolute?

MYTH & REALITY

As part of its coverage of the Supreme Court's ruling that flag burning is a protected form of free speech, the *Today* show invited a representative of the American Legion (the nation's largest veterans' organization) to appear and explain the group's reaction to the decision. Not surprisingly, the American Legion spokesman denounced the Court's decision. The interview did not end there, however. Jane Pauley, one of the show's hosts, asked the legionnaire to explain what the flag meant to him and other veterans. In response, the guest noted simply that "The flag is the symbol of our country, the land of the free and the home of the brave." Not satisfied with the answer, Pauley pressed further, asking, "What exactly does it symbolize?" Puzzled and perhaps a little annoyed by such a question, the guest responded, "It stands for the fact that this is a country where we have a right to do what we want."[1]

Obviously the legionnaire did not mean exactly what he said because that would have justified the rights of flag burners. Nevertheless, he was expressing the commonly held view that in America the guarantee of civil liberties means that we can do what we want. (**Civil liberties,** most of which are spelled out in the Bill of Rights, protect individuals from excessive or arbitrary government interference.) As we will see, that belief is a myth, the *myth of absolute or complete liberty;* liberty is not absolute, nor did our founders think it could be. Moreover, few Americans really believe in complete liberty when it applies to unpopular groups. When asked general questions about First Amendment liberties, Americans almost universally support them. But support for these liberties drops significantly in regard to flag burners, for instance. As you read this chapter, notice how our understanding of liberty has changed. It is not just a static concept enshrined in the Bill of Rights and other constitutional provisions. Instead, like the Constitution, it has been altered by time and circumstances.

Civil liberties Freedoms, most of which are spelled out in the Bill of Rights, from excessive or arbitrary government interference.

Public attitudes toward **civil rights** (guarantees of protection by government against discrimination or unreasonable treatment by other individuals or groups) tend to reflect a second widely held myth, the *myth of guaranteed political and social equality.* According to that myth, participation in the political and social system is open equally to all. Yet discrimination is still a feature of American society. Indeed, national, state, and local governments have often enforced discrimination instead of guaranteeing individual civil rights. The rights of minorities have often been ignored in favor of the interests of the majority. Our understanding of civil rights—like our understanding of civil liberties—is constantly changing. Even as our nation struggles to live up to the promise of political equality for African Americans and women, there are new demands for civil rights.

Civil rights Guarantees of protection of individuals by the government against discrimination or unreasonable treatment by other individuals or groups.

In this chapter, we consider how choices are made regarding the way in which rights and liberties are protected. We briefly explore the expansion and contraction of liberties as the courts have interpreted and reinterpreted the Bill of Rights. We also look at the way the Supreme Court has treated minorities, noting particularly its interpretation of the Fourteenth Amendment as it affects the rights of African Americans and women.

Applying the Bill of Rights to the States

The original Constitution, unlike several state constitutions, made no mention of a bill of rights. Why no such protection was specified is unclear. Most historians argue that the framers simply felt that a listing of rights and liberties was unnecessary. The national government was to have only the powers granted to it, and the Constitution did not give the new government any power to infringe on the people's liberties. Therefore, many delegates reasoned, there would be no problem. No doubt they also assumed that the separation of powers and the system of checks and balances would thwart any effort to diminish individual liberties.

The failure to include a bill of rights in the Constitution caused clashes at state ratifying conventions. State after state ratified the Constitution only on the understanding that the new Congress would strengthen the document with a guarantee of certain personal liberties. Consequently, the First Congress, meeting in September 1789, proposed twelve amendments to the Constitution; within two years the states had ratified ten. These ten amendments, collectively referred to as the Bill of Rights, constitute a list of specific limits on the power of the national government.

Originally, the provisions of the Bill of Rights were understood to limit only the actions of the national government. States were restricted only by the provisions of their individual constitutions. The Supreme Court decision in *Barron* v. *Baltimore* (1833) clarified that view.[2] John Barron, the owner of a wharf in Baltimore's harbor, sued city officials who had decided to redirect several streams that fed into the harbor. By redirecting the streams, the city had caused large deposits of sand to build up, making the wharf inaccessible to ships. Because the city had destroyed his business, Barron claimed that city officials were required by the Fifth Amendment to provide just compensation.

After reviewing the precise wording and historical justification for adopting the Bill of Rights, Chief Justice John Marshall, writing for a unanimous Court, ruled against Barron. According to Marshall, the Bill of Rights applied only to the national government. That is why, Marshall argued, the first word of the First Amendment is *Congress*. That position remained unchallenged until the ratification of the Fourteenth Amendment in 1868.

Drafted chiefly to provide equality before the law to the recently emancipated slaves, the Fourteenth Amendment contains much broader language. Its very first paragraph includes this statement: "nor shall any State deprive any person of life, liberty, or property, without due process of law." This statement is critically important for understanding the role of the Bill of Rights in modern society. To some, this "due process" clause clearly indicates that the framers of the Fourteenth Amendment intended to reverse the *Barron* v. *Baltimore* decision. For instance, throughout his long career, Supreme Court Justice Hugo Black steadfastly maintained that the Fourteenth Amendment *incorporated* (that is, made applicable to the states) the entire Bill of Rights.[3]

Although a majority of the Supreme Court has never fully accepted Black's sweeping interpretation of the Fourteenth Amendment, most provisions of the Bill of Rights have since been applied to the states. Beginning in 1925, the Supreme Court slowly increased the number of provisions applicable to the states. It did so through **selective incorporation**—the application to the states of only those portions of the Bill of Rights that a majority of justices believed to be fundamental to a democratic society. The 1937 case of *Palko* v. *Connecticut* illustrates that approach.[4]

Selective incorporation The Supreme Court's practice of making applicable to the states only those portions of the Bill of Rights that a majority of justices felt to be fundamental to a democratic society.

Frank Palko was found guilty of second-degree murder and sentenced to life in prison. The prosecutor, desiring a conviction for first-degree murder, successfully appealed the trial court's decision and retried Palko. This time, Palko was found guilty of first-degree murder and sentenced to death. He then appealed his case to the Supreme Court, claiming that the second trial was unconstitutional because the Constitution protected an individual from double jeopardy, or being tried twice for the same crime. Writing for the Court, Justice Benjamin Cardozo acknowledged that the Bill of Rights contains guarantees so fundamental to liberty that they must be protected from state as well as national infringement. He did not, however, include among these guarantees the protection against double jeopardy. Cardozo granted that this was valuable and important, but it was not "the essence of a scheme of ordered liberty." Consequently, Frank Palko was executed.

In 1969 the *Palko* decision was overturned, and by the early 1970s the Supreme Court had incorporated almost all provisions of the Bill of Rights. Still unincorporated is the Fifth Amendment's guarantee of indictment by grand jury "for a capital, or otherwise infamous crime." More controversial is the unincorporated status of the Second Amendment, which provides that "a well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Incorporating the Bill of Rights is one thing, but defining the scope of its provisions is another. We turn now to the Court's interpretation of several provisions of the Bill of Rights, beginning, naturally, with the First Amendment.

The First Amendment Freedoms

Because the First Amendment is written in absolute terms ("Congress shall make no law . . ."), it is more likely to be subject to the myth of absolute liberty than the other amendments. But as we will see, the exercise of First Amendment freedoms often conflicts with other highly desirable goals of society. Most justices have realized that it is impossible to protect all liberties without qualification. Instead, the issue has been one of balance. Sometimes the Court has interpreted the safeguards of the First Amendment strictly, giving maximum protection to individual liberties. At other times, it has allowed the government great latitude in pursuing its interests. Drawing the lines has never been easy, but it has always been necessary.

Freedom of Speech

Freedom of speech is essential for a democracy. As Justice Black observed, "Freedom to speak and write about public questions is as important to the life of our government as is the heart to the body."[5] The First Amendment states that "Congress shall make no law . . . abridging the freedom of speech or of the press." Nevertheless, the freedom to speak has often been the target of government regulation. No matter how highly we value free speech, each of us is likely at some time to see its exercise as dangerous. This is simply a recognition that ideas have consequences—consequences that we may disapprove of or even fear.

Changing Standards. Although the phrasing of the First Amendment seems to prohibit any limitations on speech, the Supreme Court has never viewed freedom of speech as immune from all governmental restriction. Justice Oliver Wendell Holmes once noted that freedom of speech does not protect someone who is "falsely shouting fire in a crowded theater." The Court has tried to define the circumstances under which the government may limit speech. To that end, it has employed a series of tests designed to strike a balance between the constitutional protection and the need for public order or security.

The first of these tests was developed by Justice Holmes in *Schenck* v. *United States* (1919).[6] Charles T. Schenck had been convicted under the Espionage Act of 1917 for distributing leaflets urging young men to resist the World War I draft. Writing for a unanimous Court, Justice Holmes rejected the proposition that speech was always protected from government restriction and instead

Liberty for the Unpopular

Although Americans take great pride in the nation's abstract commitment to political liberty, they are often unwilling to extend constitutional protections to highly unpopular groups such as the Ku Klux Klan.



Clear and present danger test The proposition proclaimed by the Supreme Court in *Schenck* v. *United States* (1919) that the government had the right to punish speech if it could be shown to present a grave and immediate danger to the country's interests.

Bad tendency test The principle that the Supreme Court began to prefer, in First Amendment cases, over the clear and present danger test. It allowed the government to punish speech that might cause people to behave illegally.

Preferred freedoms test The principle that some freedoms—such as free speech—are so fundamental to a democracy that they merit special protection. The test was instituted by the Warren Court of the 1960s.

expounded the **clear and present danger test.** The question, Holmes said, was whether speech would cause evils that the government had a right to prevent. If the speech could be shown to present grave and immediate danger to the government's interests, the government had a right to punish it. In ordinary times, the justice admitted, the defendant would have been within his constitutional rights, but these were not ordinary times. Urging young men to resist the draft during a war was, Holmes said, a serious threat to the nation's safety.

Very soon after the *Schenck* decision, the majority of the Court began to substitute for clear and present danger the **bad tendency test.** That test allowed the government to punish speech that might cause people to engage in illegal action. Announced in *Gitlow* v. *New York* (1925),[7] the bad tendency test removed the need to prove a close connection between speech and the prohibited evil. To justify a restriction of speech, the government only needed to demonstrate that the speech might, even at some distant time, present a danger to society. Thus Benjamin Gitlow, a member of the Socialist party, could be convicted under a criminal anarchy law that prohibited anyone from advocating the overthrow of the government, even though no evidence showed that his efforts had any effect.

During the 1960s, questions of free speech became numerous as the civil rights movement and the movement against the Vietnam War generated a succession of mass protests. Sit-in demonstrations, protest marches, and draft-card burnings raised new issues of free speech. The Supreme Court of that era, led by Chief Justice Earl Warren, rejected the bad tendency test of the earlier period. It substituted the **preferred freedoms test,** which proposed that some freedoms—free speech among them—are so fundamental to a democracy that they merit special protection. The government can restrict these freedoms only if some exercise of them presents a grave and immediate danger to the larger society. Theoretically, then, government may limit speech, but in practice it is difficult to design a law that passes the test. The preferred freedoms doctrine comes close to banning all government restriction of speech.

Symbolic Speech. Not all speech is verbal. In fact, one may engage in what is called symbolic speech without uttering a word. Gestures and even the wearing of a certain type of clothing may convey an opinion, perhaps even more effectively than speech. Because symbolic speech is a form of communication, the Supreme Court has generally accorded it the protection of the First Amendment. In 1989, for instance, the Court upheld the right of protesters to burn the American flag. Writing for the majority in *Texas* v. *Johnson,* former Justice William Brennan argued that laws that prohibit the burning of the flag infringe on a form of constitutionally protected speech.[8] Brennan's opinion was greeted by a storm of outrage. Saying that "flag burning is wrong, dead wrong," President George Bush called for a constitutional amendment to overturn the decision. Although Bush's proposed constitutional amendment failed in the Senate, Congress did pass the Flag Protection Act of 1989, which provided criminal punishments for anyone who knowingly "mutilates, defaces, physically



Burning Old Glory

The congressional act of 1989 banning desecration of the flag prompted several protests challenging the law. Pictured here is a man, identified only as Dred Scott, being arrested by Capitol Hill police after he set fire to a flag on the steps of the Capitol.

defiles, burns, maintains on the floor or the ground, or tramples upon any flag of the United States." In 1990, however, with Justice Brennan again writing the majority opinion, the Court, in *U.S.* v. *Eichman,* ruled that the new law also violated the Constitution's guarantee of freedom of speech.[9]

Not all symbolic acts have gained protection from the Court. In 1968, for example, the Court ruled that burning a draft card was not a protected form of symbolic speech, despite the obvious political message conveyed by the act.[10] Rejecting the view that "an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea," Chief Justice Warren concluded that the government's vital interest in having a system for raising armies justified an incidental limitation on the First Amendment. More recently, the Court upheld a lower court's order prohibiting protesters from blocking the entrance to an abortion clinic. Writing for the Court in *Madsen* v. *Women's Health Center* (1994)[11] Chief Justice William Rehnquist argued that the state's interest in protecting the well-being of the clinic's patients justified the restraint on free speech.

CRITICAL THINKING

What kinds of symbolic actions might be considered speech?

The First Amendment's guarantee of free speech, including symbolic speech, also covers the freedom not to engage in symbolic action, such as saluting the flag. This freedom not to speak, in words or symbols, was first articulated by the Court in *West Virginia State Board of Education* v. *Barnette* (1943). In that case, Walter Barnette, a parent of school-aged children, challenged a West Virginia statute that required all teachers and schoolchildren to recite the Pledge of Allegiance while maintaining a stiff arm salute. Barnette, a Jehovah's Witness, claimed that the action violated a religious commandment against worshiping graven images. Speaking for the majority, Justice Robert Jackson held that the state could not compel any student to salute the flag. To those who argued that a compulsory flag salute was necessary to foster national unity, Jackson answered: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein."[12]

Freedom of the Press

The same language protects the freedom of the press, which is closely linked with freedom of speech. Because the rights at stake are so similar, many of the lines of reasoning applied in free speech cases also fit freedom of the press. As with free speech, however, the majority of Supreme Court justices have rejected the proposition that freedom of the press is an absolute.

Prior Restraint. Even though the Supreme Court has never accepted complete freedom of the press, it has repeatedly struck down laws imposing prior restraint. **Prior restraint** means blocking a publication from reaching the public. The First Amendment has stood as a strong check against would-be censors. The first significant prior restraint case, *Near* v. *Minnesota* (1931), illustrates the point.[13]

Prior restraint The government's blocking of a publication before it can be made available to the public. The Supreme Court has repeatedly struck down laws imposing prior restraint on publications.

At issue in *Near* was a state statute that provided for the banning of "malicious, scandalous and defamatory" newspapers or periodicals. After he had printed a series of articles criticizing the local police department, Jay Near, the publisher of the Minneapolis-based *Saturday Press*, was ordered to cease publication of the weekly scandal sheet. In addition to his attacks on city officials, there was a constant anti-Semitic, pro–Ku Klux Klan theme in each issue of the paper.

CRITICAL THINKING

What might justify prior restraint?

Clearly, the *Saturday Press* was malicious, scandalous, and defamatory. Yet the Supreme Court lifted the ban on publication, with Chief Justice Charles E. Hughes observing that prior restraint could be applied only in "exceptional cases." Hughes admitted that under some circumstances the government might prohibit the publishing of truly harmful information—for example, information about troop movements in wartime. But in ordinary circumstances, the presumption should be in favor of publication.

A more serious challenge to freedom of the press arose in *New York Times* v. *United States* (1971), also known as the Pentagon Papers case.[14] Both the *New York Times* and the *Washington Post* published portions of a classified report on the

history of American involvement in Vietnam. Citing a breach of national security, the government sought an order to prevent further publication of the material by the two newspapers. A divided Court (6 to 3) ruled that the newspapers could continue publishing the report because the government had not justified the need for prior restraint. Still, only Justices Black and William Douglas took the position that the government could never restrain publication. The four others in the majority assumed that in extreme cases national security could justify an injunction, thus raising the possibility of a constitutional exercise of prior restraint.

The great leeway granted to the press by the Court in the area of prior restraint does not mean that the press is free to do as it pleases without regard to consequences. The press can be punished *after* publication. Two forms of expression—libel and obscenity—are particularly open to punishment.

Libel The use of print or pictures to harm someone's reputation; it is punishable by criminal law and subject to civil suits for damages.

Slander Injury by spoken word. Like libel, it is outside First Amendment protection and punishable by criminal law and civil suits.

Libel. **Libel** is the use of print or pictures to harm someone's reputation, whereas **slander** is injury by spoken word. Traditionally, these actions have not received First Amendment protection; therefore, they have been punishable under criminal law and subject to civil prosecution for damages.

Until 1964, a plaintiff could win a libel suit simply by proving that the statements in question were substantially false. In 1964, however, the Court expanded press protection by requiring that public officials claiming to be libeled prove that the statements were made with "actual malice."[15] In order to recover damages, an official must prove not only that the accusation is false but also that the publisher acted "with knowledge that it was false or with reckless disregard of whether it was false or not." This "actual malice" standard was later extended to cover public figures—private citizens who, because of their station in life or their activities, are newsworthy. Actual malice is very difficult to prove, and therefore the Court's decisions virtually immunized the press against libel suits by public officials and public figures.

Perhaps the Court sensed that it had gone too far in protecting the press at the expense of private individuals who had been victimized by irresponsible attacks, because in 1976 it narrowed the category of public figures. In *Time, Inc.* v. *Firestone* (1976), the Court awarded damages against the news magazine *Time*.[16] A *Time* article about a divorce proceeding referred to the divorcee as an adulteress, a finding not substantiated in the trial court's decree. Ruling against the magazine, the Court redefined a public figure as one who voluntarily enters "into the forefront of public controversies." Because parties to a divorce do not meet such a test, Mary Alice Firestone did not need to prove actual malice, but only negligence—a lack of care in checking the facts. In 1988, however, the Court reaffirmed its "actual malice" standard for public figures when it ruled that the Reverend Jerry Falwell was not entitled to compensation for the emotional distress he suffered as a result of a vulgar parody of him published in *Hustler* magazine.[17]

Obscenity. Obscenity has never been considered deserving of First Amendment protection. Any work that is judged obscene may be banned. But what is obscene? Again and again the Court has confronted that question, and each time the

MYTHS IN POPULAR CULTURE





Free (the) Music?

From the beginning, the Internet has been viewed by some as a liberating technology, designed to free individuals from the power of large organizations. Hierarchical control and corporate dominance of information are viewed as abominations. In this view, information is power, and it belongs to everyone. No one owns information in cyberspace.

But are there limits to the sharing? Certainly the recording industry thinks so. Responding to the technology that allows users to download copyrighted music without permission and, more importantly, without paying royalty fees, the recording industry has gone on the offensive. Using lawsuits and a sophisticated lobbying campaign, the industry has launched a furious attack on the practice of sharing digitized music. The first target, MP3, a dot.com company that makes some 40,000 CDs from its library available for downloading, has settled out of court.

MP3 is only one battlefront, however. More threatening to the record companies is Napster. Unlike MP3, Napster owns no music library. Instead, Napster provides a platform that enables users to share their music collections. Anyone with the necessary equipment and enough bandwidth can download to a CD an unlimited number of selections from the files of other users. Again, all of this music can be copied without permission or royalty fees. Claiming copyright infringement, the Recording Association of America has filed suit to prevent Napster from allowing users to download musical files. Joining the battle is Lars Ulrich, drummer for the band Metallica. Indeed, Metallica took the battle a step further than the lawsuit when it demanded that Napster deny access to some 350,000 users who had downloaded one or more Metallica songs. Ulrich, whose band has long been lauded for allowing its fans to tape live shows, has become a leader among musicians objecting to Napster. It is not about money, he claims, but artistic control. As Ulrich sees it, Napster denies artists the right to control their work. Besides, Ulrich notes, "Part of what we're trying to do here is make people understand what they are doing is illegal."

Not all artists agree. Some musicians see opportunity in technology. The legendary rapper Chuck D, for instance, sees Napster as leading a free music movement. Styling himself as the music world's Morpheus, after the Morris Fishburne character in the movie *The Matrix,* Chuck D urges visitors to his web site *(http://www.rapstation.com)* to "break free from the matrix" (in this case the traditional music industry). Rather than reducing artistic freedom, Chuck D argues that the Internet frees artists to seek their audience without the mediating control of the record labels, organizations he compares to dinosaurs. Eliminating the middleman frees the artist and the consumer, according to Chuck D.

Whatever the outcome of these suits, it has become clear that the music industry will undergo dramatic change. For even as the industry fights Napster, new programs that allow users to trade music are popping up all over the net. Programs such as Gnutella and Freenet allow the trading of musical selections, and unlike Napster they are free-floating programs that do not require the users to connect to any particular web site. What is clear is that the recording industry has a major interest in learning how to profit from the Internet. If the labels are to survive, they will have to find new sources of revenue from the Net.

justices have struggled to give meaning to the elusive concept. Indicative of the difficulty is Justice Potter Stewart's admission that he could not define hard-core pornography, but "I know it when I see it."

CRITICAL THINKING

Can violence be judged obscene?

In the first of the modern obscenity cases, *Roth* v. *United States* (1957),[18] Justice Brennan observed that sex and obscenity are not synonymous. Consequently, Brennan tried to formulate a legal test for obscenity that would protect the right to deal with sexual matters and yet reserve to the government the power to prohibit what was truly obscene. The test he proposed was "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest." Later cases attempted to clarify the test by describing the community standards as national standards, not local ones, and requiring proof that the work was "utterly without redeeming social value."[19] This latter aspect of the test made it virtually impossible for prosecutors to obtain pornography convictions.

As a presidential candidate in 1968, Richard M. Nixon vigorously criticized the rulings on pornography as overly permissive. Thus it came as no surprise when the Supreme Court led by Chief Justice Warren Burger, which included four Nixon appointees, moved to limit the spread of sexually explicit materials. In *Miller* v. *California* (1973), the Court ruled that prosecutors no longer need demonstrate that the work is "utterly without redeeming social value."[20] From *Miller* on, prosecutors have to prove only that the work "lacks serious literary, artistic, political, or scientific value."

In the *Miller* decision, the Court also rejected the previous rulings that community standards mean national standards. Arguing that it is unrealistic to require the same standard in Maine or Mississippi as in Las Vegas or New York, Chief Justice Burger expressed faith in the ability of jurors to draw on the standards of their local community. Nevertheless, the question of what constitutes obscenity remains a perplexing judicial and social issue, with the Court's decisions allowing considerable variability among communities.

Recently the Court has been even less tolerant of laws restricting indecent speech, speech dealing with sexual matters that falls short of the definition of obscenity. In 1997, for instance, the Supreme Court, in *Reno* v. *American Civil Liberties Union*, struck down a provision in the Communications Decency Act of 1996 (CDA) that made it illegal to transmit over the Internet "any . . . image or other communication which is obscene or indecent, knowing that the recipient . . . is under 18 years of age." Writing for the majority, Justice John Paul Stevens struck down the portion of the act prohibiting knowingly sending indecent materials to a minor. Although Justice Stevens acknowledged that the government had a legitimate interest in protecting children from exposure to indecent materials, the CDA, he argued, threatened to suppress too much speech among adults. According to Justice Stevens, "the interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship." Still, cyberspace is not an unregulated forum, since the Court let stand that portion of the CDA that prohibited transmitting obscene materials.[21] Similarly in the case of *United States v. Playboy Entertainment Group* (2000) the Court struck down a

federal law that limited the transmission of sexually explicit but not obscene cable broadcasts to what are called the "safe harbor hours" (10 p.m. until 6 a.m.)—hours of the day when a significant number of children are not likely to see them. Noting that the cable providers have the ability to block unwanted channels on a household-by-household basis, Justice Kennedy ruled that the government's interest in protecting children could be served by relying on this less restrictive method.[22]

Freedom of Religion

The freedom to worship was one of the dominant motives behind the founding of the American colonies. Yet, surprisingly, the original Constitution makes only one mention of religion. Article VI states in part: "no religious test shall ever be required as a qualification to any office or public trust under the United States." Not until the First Amendment do we find guarantees of religious freedom. The amendment begins: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

As we have seen, the myth of absolute liberty has seldom been upheld because First Amendment rights have often conflicted with other rights and important social values. The problem is particularly acute in the case of religious freedom. The guarantee of the free exercise of religion clearly means that the state must avoid coercion with regard to religious beliefs. But what about social policies that offend particular religious beliefs? Does the state have the right to require school attendance and vaccinations of public school students whose religious beliefs forbid such practices? Of course, the easy answer is to make an exception, but exceptions run the risk of violating another First Amendment provision—the establishment clause—by showing favoritism to one religion.[23]

Establishment of Religion. What does the establishment clause mean? Years of debate have produced two distinct opinions. One view, known as the **accommodationist interpretation,** holds that the clause was meant to be interpreted narrowly, merely barring Congress from establishing an official, publicly supported church, such as the Church of England. Proponents of this view contend that nothing in the establishment clause forbids state support of religion as long as all religions are treated equally.

Accommodationist interpretation A reading of the establishment clause that bars only the establishment by Congress of an official public church. Accommodationists agree with state support of religion so long as all religions are treated equally.

Others see the establishment clause as a broad-based prohibition against any governmental support of religion. Accordingly, they read the First Amendment as banning government involvement in all religious affairs, even in a completely evenhanded way. Advocates of this view claim that the First Amendment requires a complete separation of the government and religion, or, as Thomas Jefferson put it, a **"wall of separation"** between church and state.

Wall of separation An interpretation of the establishment clause that requires a complete separation of government and religion.

The Supreme Court has consistently espoused the "wall of separation" view. Yet in many cases the Court's decisions appear contradictory. They indicate that the justices have not completely rejected the idea of government aid to religious institutions so long as the government does not favor one religion over others.

CRITICAL THINKING

Does the Constitution require a "wall of separation"?

Thus intense debate continues over the establishment clause. It usually focuses on two questions: aid to religious schools and prayer in public schools.

The question of government aid to church-supported educational institutions has long been a knotty problem for the Court. In 1947, the Court allowed to stand a New Jersey plan for providing free bus transportation for children attending parochial schools.[24] Justice Black, writing for the Court, reasoned that the plan was designed to aid the children and their families, and not the religious institutions. Using this so-called child benefit theory, the Court has sustained state programs providing parochial schools with textbooks on secular subjects, school lunches, and public health services that are normally available in public schools.

In *Lemon* v. *Kurtzman* (1971), however, the Court declared unconstitutional state programs that used public funds to supplement the salaries of parochial schoolteachers.[25] Chief Justice Burger argued that supplementing teachers' salaries would require an "excessive entanglement" of government with religion.

Currently, the Court seems divided over establishment-clause questions. Some members seek an accommodation of secular and religious practices, whereas others are intent on maintaining a high wall between church and state. A third group on the Court seeks to present a middle position. As a result, the Court has had difficulty drawing a clear line between permissible and impermissible aid programs.

Three cases are illustrative of that division. In 1993, the Supreme Court ruled that the state of Arizona could provide, at state expense, a sign-language interpreter for a deaf student who attended a private religious school. The following year, however, the Court ruled unconstitutional a New York State school district created solely for the disabled children of a Satmar Hasidic village. Without invoking the "excessive entanglement" standard of *Lemon,* Justice David Souter wrote that New York had violated the establishment-clause principle that "government should not prefer one religion to another, or religion to irreligion." In *Mitchell* v. *Helms* (2000), however, the Court seemingly swung back to a more favorable attititude toward government aid to religious education, by upholding a federal law that lends computers and computer software to parochial schools. Although the Court did not directly address the issue of voucher programs, which allow states to provide money to students to be used at any school they choose, the plurality opinion for the Court suggested a willingness to permit such programs.[26]

The Court's decisions on prayer in public schools have created intense controversy. In 1962, public protests followed a ruling that a nondenominational prayer of twenty-two words composed by the New York State Board of Regents for daily recitation by New York schoolchildren violated the establishment clause.[27] One year later, the Court added to the controversy by declaring unconstitutional a Pennsylvania law requiring public schools to begin each day with a short reading from the Bible.[28]

Despite the fierce opposition of many religious and political leaders, the Court has maintained its stance that government-sponsored prayers in the classroom violate the First Amendment. However, the Court has never prohibited

prayer in public schools; rather, it has forbidden government encouragement of or involvement in prayer. Nevertheless, none of the frequent efforts to institute voluntary prayer in schools has met with the Court's approval. Indeed, the 2000 case of *Santa Fe Independent School District* v. *Doe* carried these decisions a step further when the Court struck down a Texas school district's policy that permitted a student, elected by the student body, to deliver an invocation before all home football games. According to Justice John Paul Stevens, "the religious liberty protected by the Constitution is abridged when the state affirmatively sponsors the particular religious practice of prayer."[29]

We must stress, though, that the Court has not opposed all exercises of religion in public life. For example, the Court has sustained the practice of opening sessions of Congress and state legislatures with a prayer.[30] Similarly, using what critics have called the "St. Nicholas, too" test, the Court ruled in 1989 that communities may erect nativity scenes and other religious symbols as long as they are part of a larger display that includes secular objects, such as Santa's house and reindeer.[31]

Free Exercise of Religion. The First Amendment also guarantees that Congress shall not prohibit the free exercise of religion. This straightforward command means that the practice of religious beliefs must be free of government interference. The Court has consistently refused to examine the content of religious beliefs. Thus, we are free to adopt any set of beliefs and to call anything a religion.

Freedom to believe, however, is not the same as freedom to act. You can believe in a religion that demands human sacrifice, but the state has a right to make such sacrifices a crime. Following this reasoning, the Court upheld a law that made it a crime to have more than one husband or wife at the same time, despite objections from Mormons.[32] It has also sustained Sunday-closing laws that have caused problems for Orthodox Jews[33] and laws that require children to be vaccinated despite their parents' religious objections.[34]

In each of these cases, the Court argued that the guarantee of free exercise cannot be absolute. The justices did, however, recognize that laws that apply to the general population but unduly burden the free exercise of religion violate the First Amendment, unless the state demonstrates an especially important and compelling interest in the regulations. Illustrative of this approach was the Court's 1972 decision in *Wisconsin* v. *Yoder*, which exempted Amish children from compulsory school attendance laws.[35] Writing for the Court, Chief Justice Burger concluded that Wisconsin's general interest in an educated population did not justify restricting the free exercise of Amish religious beliefs.

CRITICAL THINKING

What other regulations may have an "incidental effect" on institutions?

Radically departing from this precedent, in *Employment Division* v. *Smith* (1990), the Court ruled that state drug laws need not make exceptions for the sacramental use of drugs by religious sects.[36] Specifically, the Court concluded that the state of Oregon did not have to provide unemployment benefits to a worker who was fired for violating state drug laws because he had ingested peyote as part of a ceremony of the Native American Church. Although the Oregon Supreme Court reasoned that the use of the hallucinogenic plant was protected by the free-exercise clause, the U.S. Supreme Court disagreed. Such restrictions on the exer-

cise of religion were, according to Justice Antonin Scalia, permissible, as they were "merely the incidental effect of a generally applicable and otherwise valid provision." In other words, so long as the restrictions applied to all persons and were not intended to deny the free exercise of religious belief, the states needed to offer no compelling justification for the restraints. Under this reasoning, the states were given far more latitude in regulating religious institutions. Following the *Employment Division* v. *Smith* decision, for instance, Catholic teaching hospitals in Maryland lost their accreditation for refusing to perform abortions.

Distressed by the ramifications of the decision, a nearly unanimous Congress passed the Religious Freedom Restoration Act of 1993 (RFRA). Under the terms of the act, government may not "substantially burden" a person's religious practices, even if the burden results from a generally applicable law, unless the government can demonstrate that the law (1) is in furtherance of a compelling governmental interest (e.g., health or safety) and (2) is the least restrictive means of furthering that compelling interest. With this act, Congress directly overturned the *Smith* case.

Congress did not have the last word on the subject, however. In the 1997 case of *City of Boerne* v. *Flores*, the Court considered the constitutionality of the RFRA. In *Boerne*, the Roman Catholic church in Boerne, Texas, sought to overturn a local zoning ordinance that prevented it from expanding its original building. Claiming that the ordinance substantially burdened the free exercise of religion, the church argued that the RFRA exempted it from the zoning ordinance.

In his opinion in *Boerne*, Justice Kennedy delivered a stinging rebuke to Congress, declaring that the lawmakers had seized power not granted to the legislature. Congress had justified the passage of the RFRA under section 5 of the Fourteenth Amendment. (That section empowers Congress to enforce by legislation the provisions of the Fourteenth Amendment.) But, Justice Kennedy argued, Congress had not attempted to enforce a right guaranteed by the Fourteenth Amendment. Instead, he charged, it had attempted to create a right by changing the meaning of the free-exercise clause. In passing the RFRA, Justice Kennedy declared, Congress had attempted to determine "what constitutes a constitutional violation." Congress had sought to overturn a Supreme Court interpretation of the Constitution by simple statute. This, he argued, is not within their powers.

In ruling the RFRA unconstitutional, the Supreme Court guaranteed that the issue of religious freedom will remain a contentious issue in American politics. Immediately following the decision, religious leaders, lawmakers, and President Clinton assailed the ruling, promising to find a way to reverse it.

Due Process and Crime

Like the liberties discussed earlier, the rights of persons accused of crimes are rooted in the Bill of Rights, especially the Fifth Amendment's guarantee of "due process of law." These rights are meant to protect the individual from the

arbitrary use of police power. When it comes to criminal suspects, however, there is little public support for the myth of absolute liberty. The Court has tried to balance the majority's demand for protection from the criminal against the individual's need to be protected from excessive government power.

Right to Counsel

The Sixth Amendment to the Constitution guarantees an accused person the right to representation by a lawyer. But for most of our history, the states were not required to provide attorneys to poor defendants, even though most prosecutions occur in state courts. In 1932, the Supreme Court did declare that in capital offenses—those carrying the death penalty—the state was obligated to provide a lawyer to those unable to afford one (*Powell* v. *Alabama*).[37] The occasion for the ruling was a famous trial known as the Scottsboro case. In that trial, which lasted only one day, Ozie Powell and seven other young black men were charged with and convicted of raping two young white women. Before the trial, the local



The Scottsboro Defendants

Pictured here with Sam Leibowitz, an out-of-state lawyer provided by a labor organization, are the Scottsboro defendants. The young men underwent four trials and the last of the group remained in jail in 1950.

magistrate had appointed all members of the local bar as counsel for the defendants. Not surprisingly, none of these lawyers stepped forward to mount an actual defense, and the eight were sentenced to death without ever having had adequate time to secure effective counsel.

Not until 1963 did the Supreme Court extend that right to everyone charged with a felony (*Gideon* v. *Wainwright*).[38] Nine years later the Court broadened the guarantee to cover any penniless defendant being tried for an offense for which the penalty is a jail term.[39]

Considerably more controversial, and some would say more effective, were the Court's decisions providing for the right to counsel before trial. Even the most gifted lawyer is unlikely to be of much help to a client who has made incriminating statements during police questioning. In view of that fact and the likelihood that a fearful and ignorant suspect may say more than he or she intended, the Warren Court expanded the right to counsel to include the investigative stages preceding the trial. Justice Arthur Goldberg, speaking for the Court in *Escobedo* v. *Illinois* (1964), announced that the right to counsel applied whenever the investigation turned from a general inquiry to a focus "on a particular suspect."[40]

Two years later, the Court bolstered the *Escobedo* decision by requiring that police officers inform suspects of their constitutional rights. In overturning the rape-kidnapping conviction of Ernesto Miranda, the Court, in *Miranda* v. *Arizona* (1966), created specific guidelines for police interrogations.[41] Accordingly, suspects must be told that (1) they have the right to remain silent; (2) anything they say may be used against them in a court of law; and (3) they have the right to the presence of an attorney, and if they cannot afford an attorney, one can be appointed prior to any questioning. These warnings do not have to be given in this exact form, however. Police officers need only provide their equivalent.[42]

These so-called *Miranda* rights have become a basic part of police practices, but subsequent Supreme Court decisions have allowed several exceptions to the rule. For instance, the Court let stand the rape conviction of Benjamin Quarles in 1984. Before the *Miranda* warnings were read to him, Quarles, at the request of the police, implicated himself in the crime by pointing to the place where the weapon he had used in the attack could be found. In upholding Quarles's conviction, the Court argued that considerations of public safety may outweigh the need to strictly adhere to the *Miranda* decision.[43] Carving out an even more important exception, the Rehnquist Court ruled that the admission at a trial of an illegally coerced confession does not require overturning the conviction if, given all the other evidence, the impact of the confession was harmless.[44] The admission of an illegally acquired confession may be considered simply a harmless error if other evidence, gathered independently of the confession, substantiates a guilty verdict.

CRITICAL THINKING

What should be done with confessions that are illegally gathered?

The Court's willingness to allow exceptions to the *Miranda* rule encouraged many opponents of the ruling to believe that, if properly asked, the Court would overturn its own precedent. The hopes of *Miranda*'s detractors were dashed in 2000, however, when the Court in *Dickerson* v. *United States* reaffirmed its

previous decision. At issue was a 1968 federal law that attempted to overturn *Miranda* by prescribing that the admissibility of statements made by a suspect were to be judged solely on the basis of whether they were, in light of all of the circumstances, voluntarily made. Chief Justice Rehnquist dashed all hope that the precedent could be overturned by statute, however, when he ruled that ". . . *Miranda* is a constitutional decision." Since it was based on an interpretation of the Constitution, the Court's decision cannot be superseded by a statute.[45]

Searches and Seizures

The Fourth Amendment states that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." Notice that only unreasonable searches are prohibited. Unfortunately, the amendment does not tell us what is reasonable, making an absolute application of the amendment impossible.

Search warrant A written grant of permission to conduct a search that a neutral magistrate issues to police authorities. Police must describe what they expect to find and must show "probable cause."

As a general rule, a search may be conducted after a neutral magistrate issues a **search warrant,** which grants written permission. The authorities must fill out an application that describes what they expect to find and where they expect to find it. In addition, the officers must set out facts that enable the magistrate to conclude that there is "probable cause" to justify issuing the warrant. Over the years, however, the Court has recognized certain exceptions to the warrant rule.

If a suspect consents, a warrantless search is legal, even if the suspect was unaware of his or her right to refuse.[46] Recognizing that cars are mobile and relatively public places, the Court has allowed them to be searched without a warrant if the officer has "probable cause." In 1991, the Court significantly expanded that exception by ruling that police officers may conduct warrantless searches of closed containers found in automobiles if they have probable cause to believe that they conceal contraband or evidence. A suitcase being carried down the street may not be subjected to a warrantless search. But, somewhat paradoxically, that same suitcase may be searched without a warrant if it is found in an automobile.

Instances of hot pursuit also constitute an exception to the warrant requirement. Thus police officers chasing a suspect need not turn back and acquire a warrant. In 1989, the Court created an additional exception by allowing drug agents, without warrants or probable cause, to use "drug courier" profiles to stop and search people who look like possible drug dealers. Finally, a police officer need not ignore evidence accidentally discovered; the officer may seize that which is in plain sight.

Before 1961, there were few effective checks on police searches. An individual subjected to an illegal search could sue the police for civil damages, but juries rarely sympathized with criminal suspects. Evidence was admissible in state trials even if it had been gathered illegally. In 1957, police officers in Cleveland, Ohio, broke into the home of Dollree Mapp and seized pornographic materials

Exclusionary rule The principle that evidence, no matter how incriminating, cannot be used to convict someone if it is gathered illegally. Established by the Supreme Court in *Mapp* v. *Ohio* (1961).

while looking for a fugitive. Later, Mapp was convicted of possession of the pornographic materials seized in the warrantless search. On appeal, the Supreme Court overturned Mapp's conviction, ruling that evidence gathered illegally was inadmissible in state trials (*Mapp* v. *Ohio*, 1961).[47] This **exclusionary rule** means that evidence, no matter how incriminating, cannot be used to convict someone if it is gathered illegally.

Perhaps no other criminal law ruling has stirred up as much controversy as the exclusionary rule. Law enforcement officials and political leaders around the country accused the Court of coddling criminals. The exclusionary rule provoked such furor precisely because it dramatizes the conflict between the due process rights of individuals and the interests of a society attempting to control crime. Despite the intense controversy, the Court continues to enforce the exclusionary rule, although the justices have limited its reach by creating some broad exceptions. In 1984, for instance, the Court adopted what is called an "inevitable discovery exception": it permits the introduction of evidence collected illegally when such evidence would have been discovered anyway.[48] More important, that same year the Court allowed what is called the "good faith exception." If the police conduct a search using a warrant that later turns out to be invalid, the evidence discovered during the search is admissible at trial.[49]

Cruel and Unusual Punishment

In the 1962 case *Robinson* v. *California,* the Supreme Court made the Eighth Amendment's protection against the imposition of "cruel and unusual punishments" applicable to the states.[50] But beyond noting that the punishment must fit the crime, the justices did little to explain what the terms *cruel* and *unusual* meant. Lawrence Robinson had been convicted under a statute that made it a misdemeanor to be addicted to narcotics. Robinson was not under the influence of narcotics at the time of his arrest, nor were any narcotics found on him. The police officer made the arrest after observing needle marks on Robinson's arms. Likening this situation to being punished for having an illness, the Court argued that even one day in jail would be excessive.

CRITICAL THINKING

Must the punishment fit the crime?

Recent Court decisions, however, have cast doubt on whether the punishment must fit the crime. In 1991, for instance, a majority of the Court upheld a Michigan law that mandated a prison term of life without the possibility of parole for a defendant found guilty of possessing 650 grams of cocaine.[51] Writing for Chief Justice Rehnquist and himself, Justice Scalia argued that nothing in the text or the history of the Eighth Amendment supported the belief that the harshness of the penalty must be proportional to the severity of the crime. According to Justice Scalia, the Court's Eighth Amendment analysis should be limited to death penalty cases. Justices Sandra Day O'Connor, Anthony Kennedy, and David Souter agreed that the Eighth Amendment did not require proportionality, but they did conclude that it prohibited extreme sentences that are "grossly disproportionate" to the crime. It is unclear

what constitutes a grossly disproportionate sentence, but the Court will certainly revisit that issue as litigants begin to appeal the state and federal laws requiring mandatory life sentences for repeat offenders—the so-called three-strikes-you're-out statutes.

In 1972 the Court addressed the most controversial of punishments: the death penalty. A divided Court concluded, in *Furman* v. *Georgia,* that capital punishment was, in that particular case, a violation of the Eighth Amendment.[52] The Court did not reject the death penalty itself as unconstitutional; instead, the Court focused on what one justice referred to as the "wanton and freakish" pattern of the penalty's imposition. Thus, although the Court declared Georgia's death penalty unconstitutional, it also encouraged states to draft more precise laws that would guide judges and juries.

After the *Furman* decision, several state legislatures rewrote their death penalty statutes in an effort to conform to the Court's guidelines. This turned out to be difficult, however, as the Court seemingly zigzagged through the cases, allowing one statute to stand while ruling another unconstitutional. The justices continued to demand precise standards for the application of the death penalty and yet declared unconstitutional a state law that mandated capital punishment for specific crimes because it denied judges and juries the ability to consider mitigating circumstances.[53] Recently, the Court has declared the death penalty for those under sixteen to be unconstitutional but has permitted the execution of older teenagers.[54] Mentally retarded individuals may also be subject to the death penalty for capital offenses, so long as the jury is allowed to consider the defendant's retardation as a mitigating factor.[55]

Although the precise constitutional standards controlling executions remain unclear and controversial, in 1991 the Supreme Court handed down two decisions favoring the imposition of the death penalty. In the first of these cases, the Court moved to speed the execution of condemned defendants by limiting them to only one request for a writ of habeas corpus from the federal courts, unless there is good reason why a new constitutional issue was not raised in the first appeal.[56] (A writ of habeas corpus is a court order to release an individual from unlawful detainment, and an inmate's repeated requests for writs of habeas corpus can delay the inmate's execution by several years.)

In the second of the 1991 decisions, the Court reversed a four-year-old precedent and declared that victim impact statements were admissible at the sentencing phase of a capital trial. The case at issue, *Payne* v. *Tennessee,* arose out of Pervis Payne's conviction for the particularly brutal murder of Charisse Christopher and her two-year-old daughter.[57] Payne had also been found guilty of assaulting Christopher's three-year-old son, Nicholas. At the sentencing stage of the trial, the state called Nicholas's grandmother, who testified that the child continued to call out for his dead mother and sister. The grandmother also detailed the effect that the killings had on other family members. In urging that the jury sentence Payne to death, the prosecutor commented on the continuing effect the murders were having on the family—an action clearly unconstitutional under previous decisions of the Supreme Court. While admitting that adherence

to precedent is generally the wisest course, Chief Justice Rehnquist argued that the four-year-old precedent that had barred victim impact statements in capital cases was wrongly decided. Thus Rehnquist concluded that the Eighth Amendment did not preclude states from using evidence of the impact of the murder on the victim's family when seeking the death penalty.

Privacy

In a classic law review article published in the 1890s, Charles Warren and Louis Brandeis first articulated the notion of a right to privacy.[58] They hoped to establish the "right to be let alone," but the concept did not easily find a place in American law. In fact, the Supreme Court did not recognize or create such a right until the 1965 decision in *Griswold* v. *Connecticut*.[59] Dr. Estelle Griswold had been convicted under a Connecticut law that made it illegal to provide birth control devices or even give instruction on their use. When the case was appealed to the Supreme Court, Justice William O. Douglas, writing for the majority, argued that the law unduly interfered with married couples' right to privacy. Because the Constitution does not specifically mention a right of privacy, Douglas took great pains to demonstrate that, taken together, several provisions of the Bill of Rights created such a right.

Abortion

In one of the most controversial decisions it ever delivered—*Roe* v. *Wade* (1973)—the Supreme Court extended the right of privacy to cover abortions.[60] The Court ruled that in the first trimester of a pregnancy, the decision about abortion rested with the woman. In the second trimester, the state could, in order to protect the health of the woman, dictate general rules governing the procedure, such as requiring that it be performed in a hospital. Only in the third trimester could the state prohibit abortion altogether.

For sixteen years the Court continued to apply the trimester approach developed in *Roe*. In 1989, however, the Court signaled a clear change in direction. Writing for a five-member majority in *Webster* v. *Reproductive Health Services*, Chief Justice Rehnquist let stand state regulations that significantly limit a woman's right to an abortion.[61] The Missouri law at issue in *Webster* requires doctors to conduct tests of viability—tests to determine whether the fetus could survive outside the womb—whenever there is reason to believe that the woman is twenty or more weeks pregnant. Because twenty weeks is within the second trimester, the Court, by upholding the law, placed the trimester structure developed in *Roe* in grave doubt. Another provision that the Court let stand bans the use of public facilities for abortions and prohibits state employees from performing abortions. Although the Rehnquist decision stopped short of overturning *Roe*, the case

demonstrated that the majority were willing to uphold a wide array of restrictions. Moreover, four justices made it clear that the trimester formula of *Roe* was, in their view, unworkable and unacceptable.

CRITICAL THINKING

What kinds of regulations constitute an undue burden?

The *Webster* decision led many to assume that a constitutionally protected right to abortion could not survive further Court scrutiny. Expecting a definitive overturning of *Roe,* both supporters and opponents of abortion rights anxiously awaited the Court's 1992 decision in *Planned Parenthood of Southeastern Pennsylvania* v. *Casey.*[62] The Court disappointed both sides. The five-to-four decision in *Casey* upheld several restrictions on abortions, including a requirement that a woman first be counseled on the risks of and alternatives to abortion and then wait at least twenty-four hours after the counseling to have the abortion. The narrow majority also upheld the state's ban on abortion after twenty-four weeks of pregnancy unless it was necessary to save the woman's life. More importantly, the Court rejected the trimester framework developed in *Roe.* Nevertheless, the Court fell short of overturning *Roe,* declaring that a woman's right to terminate her pregnancy "is a rule of law and a component of liberty we cannot renounce." In place of the trimester formulation of *Roe,* the Court substituted the "undue burden" test. An undue burden is any law that "has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." Thus states were granted substantial new powers to regulate abortion but were prohibited from outlawing it entirely. The only clear outcome of *Casey* is that the Court will continue to hand down more abortion rulings as it seeks to define undue burden.

Doctor-assisted Suicide

Closely related to the abortion issue is the equally controversial question of doctor-assisted suicide. Through the advocacy of organizations like the Hemlock Society and more dramatically by the tenacious actions of a Michigan doctor, Jack Kevorkian, state laws making assisted suicide a criminal offense have come under attack.

This growing turmoil over euthanasia has once again thrust the Supreme Court into an intensely divisive issue of morality. For now at least, the Court has denied that there is a constitutional right to doctor-assisted suicide. In 1997, Chief Justice Rehnquist, writing for a unanimous Court, rejected a lower court decision that compared the right to die with dignity to the right to terminate a pregnancy, as an aspect of liberty protected by the Fourteenth Amendment. The state, Chief Justice Rehnquist argued, has "an unqualified interest in the preservation of human life." The state also has an interest in protecting vulnerable groups (the poor, the disabled, the elderly) from the risk of "subtle coercion and undue influence in end-of-life situations."[63] These interests, Rehnquist argued, outweigh whatever interests individuals may have in assisted suicide. In a second case decided in 1997, the Court rejected a lower court's ruling that banning doctor-assisted suicide constituted a denial of equal protection of the laws. The

lower court had reasoned that since the terminally ill have a right to discontinue life-support systems and therefore end their lives, it is a denial of equal protection to prohibit terminally ill patients who are not on life-support systems from choosing immediate death. Again speaking for a unanimous Court, the Chief Justice wrote that, "Unlike the court of appeals, we think the distinction between assisting suicide and withdrawing life-sustaining treatment, a distinction widely recognized and endorsed in the medical profession and in our legal traditions, is both important and logical." Nevertheless, five justices clouded this distinction by conceding that patients are entitled to pain relief, even if the doses needed to relieve the pain might result in the death of the patient.

Far from resolving the issue, these cases are only the beginning of the debate. The Supreme Court has ruled that states may prohibit doctor-assisted suicide, but nothing in its decisions requires states to make the practice illegal. As the Chief Justice noted, "Throughout the nation, Americans are engaged in an earnest and profound debate about the morality, legality and practicality of physician-assisted suicide. Our holding permits this debate to continue, as it should in a democratic society." Currently, only three states (Nevada, Utah, and Wyoming) have no laws pertaining to doctor-assisted suicide. In 1994, Oregon voters approved an initiative that provides limited rights to doctor-assisted suicide. After years of court battles, the Oregon law took effect in 1998 and will be watched carefully by proponents and opponents alike.

Equal Protection of the Laws

The Declaration of Independence tells us that all men are created equal, and the Fourteenth Amendment provides for equal protection of the laws. The fact is, however, that all laws discriminate. Discrimination in its broadest sense involves treating particular categories of people differently, and that is what most acts of public policy do. The important question then is, what categorizations are constitutionally impermissible? Invidious or unconstitutional discrimination occurs when a category is based on characteristics that are not fundamentally related to the situation. As you will see, race is now recognized as such a category. That recognition has come slowly to a society dedicated to the myth of guaranteed equality, and so racial discrimination persists. Can the same conclusions be drawn with regard to distinctions based on sex? Here the answer given by the Court is not so clear.

The Continuing Struggle Against Racism

An important element of post–Civil War Reconstruction was the adoption of three key amendments: the Thirteenth, Fourteenth, and Fifteenth. The Thirteenth

Jim Crow

Under the various statutes known as the Jim Crow laws, racial separation was required in all aspects of life. Nothing was too trivial to escape their reach, not even, as this picture shows, drinking fountains.



Amendment abolished slavery and involuntary servitude. The Fourteenth, as we have seen, addressed several aspects of individual freedom, but its key provision on civil rights is the clause declaring that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The Fifteenth states that the right to vote cannot be denied on "account of race, color, or previous condition of servitude."

These three amendments, plus the congressional acts passed under their authority, promised the recently freed slaves a future of political and civil equality. Indeed, as C. Vann Woodward pointed out in his classic study, *The Strange Career of Jim Crow,* the period immediately following the Civil War was a time of great progress in assimilating the former slaves.[64] But the gains did not last.

In 1883 the Supreme Court struck down the Civil Rights Act of 1875, which forbade the separation of the races in places of public accommodation—transportation, hotels, and theaters. Congress had assumed that the equal protection clause of the Fourteenth Amendment gave it the power to pass the act. In disagreeing, the Court argued that the Fourteenth Amendment applied only to state-imposed segregation, not to discrimination practiced by private individuals. This interpretation implied that Congress could act if a state affirmatively discriminated, but not if it simply allowed segregation to exist. Thirteen years later, the Court dealt another blow to those seeking an end to racial distinction when it ruled, in *Plessy* v. *Ferguson,* that the Fourteenth Amendment did not even prohibit segregation.[65] On the

contrary, the Court argued, separation of the races is permitted as long as they receive equal treatment. This is the infamous "separate but equal" doctrine.

The Court's narrow ruling on the Fourteenth Amendment, along with presidential lack of interest in racial equality, gave rise to Jim Crow laws. Community after community decreed the separation of the races, and almost no aspect of life was too trivial to escape the reach of these laws. Not only did states require separate drinking fountains and public bathrooms for blacks and whites, but some went so far as to require different courtroom Bibles.[66] The stress was on separation. Even the Court paid little heed to equality. Three years after *Plessy,* the Court let stand as a local matter a Georgia school board decision to close the black high school while leaving open the all-white high school.[67] "Separate but equal," then, meant separate.

Public Education. Despite such setbacks, the struggle to end segregation in American society continued. The National Association for the Advancement of Colored People (NAACP), formed in 1909, became the driving force in these efforts. At first, the NAACP tried to persuade Congress to pass federal legislation forbidding segregation. Failing in the legislative arena, the organization created a separate unit, the Legal Defense Fund, directed by Thurgood Marshall (who later became a justice of the Supreme Court). The primary tactic of the Legal Defense Fund was to attack segregation in the courts.

In the late 1930s, the Legal Defense Fund began a series of court battles that challenged segregation in all areas of American life. It was most successful in the realm of education. As a result of the fund's efforts, the Court struck down a Missouri law that reimbursed black law students for out-of-state tuition rather than admitting them to the University of Missouri.[68] Then, in 1950, the Court ruled that a separate University of Texas law school for blacks was not equal to the University of Texas law school attended by whites because the former lacked certain intangible factors such as prestige and reputation.[69] Although the Court failed to overturn the "separate but equal" doctrine in its Texas decision, it came close to doing so.

Finally, on May 7, 1954, the Supreme Court startled the nation by a unanimous decision, in *Brown* v. *Board of Education of Topeka,* that the Fourteenth Amendment prohibits a state from compelling children to attend racially segregated public schools.[70] In a brief opinion that specifically overturned *Plessy* v. *Ferguson,* the Court simply declared that "in the field of public education the doctrine of 'separate but equal' has no place." No other conclusion was possible, the justices argued, because "separate educational facilities are inherently unequal."

Pronouncing segregation unconstitutional was one thing; compelling desegregation was another. Recognizing that fact, the Court set the case for reargument the following term in order to consider remedies, and *Brown II* (1955) required desegregation of public schools to proceed with "all deliberate speed."[71] "All deliberate speed," however, was interpreted by many school districts and lower courts as "all deliberate delay."

Between 1955 and 1969, little change occurred in public schools in the South, and the progress that was made came at a high cost. For instance, in 1957 President Dwight D. Eisenhower used federal troops to protect black students enrolled in a Little Rock, Arkansas, high school. The admission of the University of Mississippi's first black student sparked riots that resulted in the deaths of two men. Responding to this resistance, the Court proclaimed in 1969 that "'allowing all deliberate speed' is no longer constitutionally permissible." Every school district was "to terminate dual school systems at once."[72]

Implementing the *Brown II* decision in southern schools was hard enough, but in the 1970s the Court began to confront seemingly more difficult problems of segregation in the North. By that time, many urban school systems in the North were more segregated than their counterparts in the South, but because of housing patterns rather than state laws. Having ruled that courts could order remedial action, such as busing, only to correct instances of state-imposed segregation,[73] the Supreme Court had made it extremely difficult to remedy segregation caused by the movement of white families out of the central cities to the suburbs. This movement created in the North a pattern of largely white suburban school districts surrounding increasingly black and Hispanic city schools. Thus public school integration remains an elusive goal in many cities.

Public Accommodations. The *Brown* decision had little bearing on the widespread practice of private discrimination in public accommodations. As court efforts to eliminate discrimination against blacks continued, public protest against discrimination began to mount. In December 1955, Rosa Parks, a seamstress in Montgomery, Alabama, was arrested for refusing to give up her seat on a bus to a white man. Her arrest sparked a yearlong boycott of the Montgomery bus system—a boycott led by Dr. Martin Luther King, Jr. Eventually the system was integrated, but not before Dr. King's home was bombed and he and several others were arrested for "conspiracy to hinder the operations of business."

What power has Congress used to prohibit discrimination in public accommodations?

The Montgomery boycott was only the beginning, however. In the early 1960s, unrest grew among the opponents of segregation: Blacks and white sympathizers increasingly turned to public protest. Marches and sit-in demonstrations received wide publicity as police reacted to the protests with increasing force. In 1963, President John F. Kennedy proposed legislation to desegregate public accommodations, which Congress finally passed at the urging of Kennedy's successor, President Lyndon B. Johnson.

The Civil Rights Act of 1964 made it a crime to discriminate in providing public accommodations. It barred racial discrimination in hotels, restaurants, and gas stations; at sporting events; and in all places of entertainment. The act also included provisions against discrimination in employment. Though covering similar ground to the Civil Rights Act of 1875, the 1964 statute invoked congressional power over interstate commerce rather than the Fourteenth Amendment. To justify an attack on discrimination on the grounds that it

interfered with the flow of interstate commerce may seem strange and even dehumanizing, but it was an effective way of getting around the narrow reading of the Fourteenth Amendment given by the Supreme Court in the Civil Rights Cases of 1883.

Voting Rights. As we noted earlier, the Fifteenth Amendment states that the right to vote cannot be denied on account of race. Nevertheless, after 1877—the year the federal government stopped supervising elections in the South—southern states excluded the vast majority of blacks from the voter registration rolls. They did so through diverse and inventive means that commonly involved the use of some type of highly subjective test. Potential voters might, for instance, be given portions of the Constitution to read and explain. Because the examiners had complete freedom in selecting questions and answers, rejecting applicants was an easy matter. Even black lawyers sometimes failed the Constitution test. So effective were these efforts that in 1961 less than 10 percent of the black population was registered to vote in 129 counties of the South.

To address this situation, Congress passed the Voting Rights Act of 1965. In states and subdivisions covered by the act, all literacy tests were banned, and the attorney general was empowered to assign federal registrars to enroll all applicants meeting state requirements. Extensions of the act in 1970 and 1975 banned literacy tests nationwide and broadened coverage to areas where large numbers of citizens spoke languages other than English—both languages spoken by immigrants, such as Spanish and Asian languages, and those spoken by Native Americans and Eskimoes.[74] After a protracted struggle between Congress and the White House, in 1982 portions of the act were extended for twenty-five years. Finally, in 1991, the Supreme Court expanded the reach of the act by ruling that its provisions covered the election of state and local judges as well as legislative and executive officials.[75]

Sex Discrimination

White women have always held citizenship in the United States, but for some time it was citizenship without political rights. Women could not vote, and married women were recognized by law as subservient to their husbands. They could not own property, contract debts, or even keep any money they might earn. In return for a woman's giving up her separate existence, the law guaranteed the wife that her husband would provide for her necessities. He was not responsible, however, for anything beyond what he decided were the necessities of life.

The first time American women organized politically was in the effort to abolish slavery. This first generation of feminists, led by Lucy Stone, Elizabeth Cady Stanton, Susan B. Anthony, and others, were dedicated abolitionists. In the organized opposition to slavery, these feminist leaders developed political skills that laid the foundation for the first women's movement.

Crucial to the movement was the first women's rights conference, held in 1848 in Seneca Falls, New York. However, suffrage—the most dramatic of the many reforms proposed by the Seneca conference—was submerged in the Civil War effort and then in the struggle over the post–Civil War amendments. Although some feminists wanted to add sex to the provisions of the Fifteenth Amendment's list of attributes that could not be used to deny the right to vote, others opposed such an effort. Many supporters of the Fifteenth Amendment maintained that the issues of race and sex had to be treated separately if they were to be successfully resolved.

Among the many groups that continued to press for suffrage, none was more dedicated than the Congressional Union. Using techniques that would become more common in the 1960s, its members held marches, picketed the White House, and staged hunger strikes. Several members were jailed and beaten for their protests. Finally, in 1920, the Nineteenth Amendment was ratified. After years of struggle, the Constitution now contained the guarantee that "the right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

After the adoption of the Nineteenth Amendment, the women's movement lost steam. The movement had always been broader than the issue of suffrage, but the long and difficult battle for the vote had displaced most other issues. Not until the early 1960s did the women's movement revive. This "second wave" has been seeking the eradication of sexism in all areas of life.

Paternalism and Discrimination. The ratification of the Nineteenth Amendment did not eliminate sex discrimination from American society, partly because sex discrimination, even more than race discrimination, stems from a strong tradition of paternalism. Discrimination against women has been routinely defended as a means of protecting them, even when the goal was exploitation.

For many years the Supreme Court rather uncritically accepted distinctions based on sex if they appeared to benefit women. The Court's 1948 decision in *Goesaert* v. *Cleary* illustrates that approach.[76] The Court upheld a Michigan law that prohibited a woman from working as a bartender unless she was the wife or daughter of the bar's owner. Women could, however, work as waitresses. The Court accepted the argument that the statute protected women from the unwholesome elements encountered by bartenders. The exception for wives and daughters was reasonable because the woman's husband or father would protect her. What the Court overlooked was that the statute maintained male domination of the better-paying jobs, while women were relegated to the less lucrative role of server.

Even the Warren Court, which did so much to open American society to racial minorities, accepted the paternalistic treatment of women. In *Hoyt* v. *Florida*, the Court upheld the conviction of a woman charged with murdering her husband. Gwendolyn Hoyt claimed that her conviction by an all-male jury violated her rights under the Fourteenth Amendment. Florida law made both

men and women eligible for jury service, but it also provided that no woman would be called for jury duty unless she had previously registered with the clerk of the court her desire to be placed on the jury list. In declaring the Florida statute constitutional, Chief Justice Earl Warren noted that "woman is still regarded as the center of home and family life."[77] A woman had a right but not a duty to jury service. Any vitality that *Hoyt* may have had as precedent was eliminated in *J.E.B.* v. *Alabama* (1994), in which the Court ruled that lawyers may not exclude people from a jury based solely on sex.

In the last twenty years or so, the Court has been less tolerant of statutes that supposedly benefit women. Thus the Court struck down an Oklahoma law that set a lower drinking age for women than for men.[78] Nevertheless, the Court continues to accept some classifications that treat men and women differently. For instance, the Court accepted as constitutional Florida's tax exemption for widows but not widowers. Noting the economic inequality that existed between men and women, the Court argued that the law was designed to compensate for past discrimination.[79]

Despite the Court's willingness to include sex discrimination under the equal protection clause of the Fourteenth Amendment, it has traditionally not received the same strict scrutiny as racial and ethnic discrimination. That may be changing, however.

Indications of a change in the Court's approach appeared in its 1996 decision on the status of the Virginia Military Institute (VMI) as an all-male school. VMI is a state-supported, four-year institution of higher education providing a unique experience. Students at VMI are subjected to an environment emphasizing "physical rigor, mental stress, absolute equality of treatment, absence of privacy, minute regulation of behavior, and indoctrination in desirable values." In order to stave off a constitutional challenge to the all-male admissions policy, the state of Virginia proposed the creation of a parallel military leadership program at nearby Mary Baldwin College. This Virginia Women's Institute for Leadership (VWIL) would not offer the same rigor that characterized VMI, but it would, the state argued, provide women with an education as citizen soldiers.

CRITICAL THINKING

Does gender discrimination deserve the same protection as racial discrimination?

When this matter was appealed to the Supreme Court, Justice Ruth Bader Ginsburg, writing for the seven-member majority in *U.S.* v. *Virginia*, ruled that the all-male policy violated the equal protection clause of the Fourteenth Amendment.[80] Furthermore, Justice Ginsburg argued, the establishment of the VWIL fell far short of the necessary remedial action required. Virginia could comply with the equal protection clause only by opening VMI to women.

More important than the immediate case, Justice Ginsburg seemingly elevated the level of review employed by the Court. Although the justice denied that classifications based on sex were to be treated like classifications based on race or national origin, she went on to announce a very high standard of review. Accordingly, Ginsburg noted that when reviewing classifications based on sex, "the reviewing court must determine whether the proffered justification is 'exceedingly persuasive.'" To most observers, "exceedingly persuasive" seems to be another way of saying "strictly scrutinized." Whether this

is true or not only future cases will determine. It may be that in the future questions of sex discrimination will receive the same scrutiny as those involving race and national origin.

Women in the Work Force. One of the most dramatic changes in society has been the growing importance of women in the work force. In 1987, for instance, the Census Bureau reported that for the first time in American history, more than half of all women with children under the age of one were either working or actively seeking employment. Yet women's wages still lag behind those of men. To some extent the wage gap between men and women represents employers' failure to abide by the Equal Pay Act of 1963, which requires "equal pay for equal work." Economists disagree over how much of the wage gap is the result of such discrimination as opposed to other factors. What cannot be denied is that women are now a vital part of the work force and expectations of gender equality in the workplace will not subside.

Although Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of "race, color, religion, sex, or national origin," its application to women has been slow in coming. Initially, the national government was reluctant to apply the act to cases of sex discrimination. In fact, Herman Edelsberg, a former executive director of the Equal Employment Opportunity Commission, portrayed the ban on sex discrimination in the workplace as a "fluke . . . conceived out of wedlock."[81] The federal courts often tolerated discrimination based on sex plus some other characteristic. For example, the Court used the "sex-plus" distinction to justify company policies that provided for compensation for all non-job-related disabilities except pregnancy. Such policies, the Court argued, do not constitute sex discrimination because they are not based simply on sex but rather on sex plus the characteristic of pregnancy.[82] Congress overturned that decision, however, by passing the Pregnancy Discrimination Act of 1978.

CRITICAL THINKING

On what grounds is sexual harassment illegal?

Title VII also eventually became the vehicle used to attack sexual harassment in the workplace, but judicial acceptance of harassment as discrimination was slow in developing. Initially, courts ruled that harassment was a private matter not covered by Title VII. In 1974, for example, the district court for the District of Columbia dismissed a case brought by an employee of the Environmental Protection Agency who claimed that her job had been abolished because she refused to have an affair with her supervisor. According to the court, the supervisor's actions did not constitute sex discrimination because they were motivated not by her sex but by her refusal to have sexual relations with him. Title VII, the court concluded, did not prohibit that kind of sex-plus discrimination.

Slowly, however, courts began to accept that at least some types of sexual harassment constituted sex discrimination. In the 1976 case of *Williams* v. *Saxbe*, the district court for the District of Columbia became the first court to rule that sexual harassment could violate Title VII.[83] Diane Williams brought suit against the U.S. Department of Justice, alleging that she was fired less than two weeks after refusing her supervisor's sexual advances. In finding in Williams's favor, the district

court ruled that the type of sexual harassment known as *quid pro quo* constituted sex discrimination. (*Quid pro quo* harassment occurs when a supervisor demands sexual favors from an employee in exchange for some employment advantage.)

Although several lower courts followed the *Williams* decision in permitting Title VII suits for sexual harassment, the U.S. Supreme Court did not rule on the issue until 1986. Writing for the majority in *Meritor Savings Bank* v. *Vinson,* Chief Justice Rehnquist argued that sexual harassment need not involve questions of promotion or job loss to be prohibited.[84] The creation of an offensive or hostile working environment is, Rehnquist said, sufficient to satisfy the definition of sex discrimination. Not every instance of offensive or annoying behavior in the workplace constitutes harassment, but the Court argued that a pattern of behavior that includes such things as requests for sexual favors, sexual innuendoes, or sexual insults creates a condition of employment disparity that Title VII prohibits. The Court's 1993 decision in *Harris* v. *Forklift* broadened this ruling. The Court decided that a woman claiming sexual harassment need not prove that she was psychologically injured in order to receive a damage award. She need only prove that the work environment was such that a reasonable person would find it hostile or abusive.[85]

Emerging Issues of Discrimination

Among the interests starting to seek coverage under the equal protection clause of the Fourteenth Amendment, none are more controversial than the groups representing homosexuals and illegal immigrants. For over a decade, gay rights organizations and the Christian right have waged an ideological battle over the constitutional rights of homosexuals. The results, at least in the courts, have been mixed. Similarly, a growing anger over illegal immigration has prompted a national re-examination of U.S. immigration policy and the rights accorded immigrants.

Equal Protection and Sexual Orientation. Initially, the Supreme Court was reluctant to extend judicial protection to homosexual acts. In the 1986 case of *Bowers* v. *Hardwick,* the Court ruled that state laws prohibiting homosexual sodomy, even between consenting adults, did not violate the constitutional right to privacy.[86] Writing for the five-member majority, Justice Byron White argued that whatever residual rights to the privacy of the bedroom existed were clearly outweighed by the majority's belief that homosexual sodomy is "immoral and unacceptable." Although the *Bowers* case, based as it was on the right to privacy, did not involve an equal protection claim, the decision did not suggest that the Court was open to the advocates of gay rights. After all, if the majority's belief in the immorality of homosexuality outweighs the right to privacy, it stands to reason that it may also constitute grounds for discrimination.

CRITICAL THINKING

Is discrimination based on sexual orientation protected by the Fourteenth Amendment?

Thus the Court surprised both sides on this issue when, in the 1996 case of *Romer* v. *Evans,* it struck down an amendment to the Colorado constitution that

Demanding Equal Treatment

Following the path laid out by previous civil rights movements, gay and lesbian rights supporters have, in recent years, begun to speak out against discrimination. Demonstrations such as the one pictured here have become more frequent as gays and lesbians have become more vocal in their demands for equal treatment.



prohibited any law protecting homosexuals from discrimination.[87] The amendment (known as Amendment 2) was the voters' response to ordinances in three Colorado cities that made it illegal to discriminate against homosexuals, as well as women and racial minorities, in housing, education, employment, and health and welfare services. Ignoring the *Bowers* decision, Justice Anthony Kennedy argued that Amendment 2 violated the Fourteenth Amendment by depriving homosexuals of the right to seek legal protection against any form of discrimination except by the extraordinary method of a constitutional amendment. In overruling Amendment 2, Justice Kennedy very carefully avoided defining homosexuals as a constitutionally protected class entitled to strict judicial scrutiny. Discrimination against homosexuals could, Kennedy argued, be justified so long as it served a legitimate government interest. But the justice went on to argue that the majority's "animus" toward a group does not constitute a legitimate governmental interest. No group, Kennedy argued, could be put at an electoral disadvantage simply because a majority disapproved of the group. As Justice Antonin Scalia pointed out in a biting dissent, the juxtaposition of *Bowers* and *Romer* means that a practicing homosexual may be jailed but not put at an electoral disadvantage. Nor may states, in their antidiscrimination laws, require the Boy Scouts to accept homosexuals. According to the Court's 2000 ruling in *Boy Scouts of America* v. *Dale*, forcing the Boy Scouts to admit homosexuals violates the associational right of the private organization.[88]

Even as the courts were struggling with the question of discrimination against homosexuals, Congress and the Clinton administration waded into the issue. Early in Clinton's first term, he proposed and Congress passed the "don't ask, don't tell" policy for the armed services. Under this policy, the armed services may discharge an acknowledged homosexual; however, they may not question a member of the uniformed services about his or her sexual orientation. A member may be discharged for homosexuality only if the individual makes his or her sexual orientation known by word or deed. The constitutionality of this policy remains murky. Some lower courts have ruled it unconstitutional, whereas others have found it constitutional. In the meantime, according to a 1997 study, the number of discharges for homosexuality has increased. Ultimately, it is likely that the issue will make its way to the Supreme Court.

Three years after passing "don't ask, don't tell," Congress again entered the fray, this time to minimize the effects of a decision of the Supreme Court of Hawaii. Like the other forty-nine states, Hawaii limited marriage to couples of opposite sexes, but in 1996 the state's Supreme Court ruled the law unconstitutional. Even before the Supreme Court of Hawaii announced its decision, Congress rushed through and the president signed the 1996 Defense of Marriage Act. The act defines marriage as "the legal union between one man and one woman as husband and wife." More important, the act relieved the states of the legal responsibility—under the full faith and credit clause of the Constitution (Article IV, Section 1)—to recognize same-sex marriages granted in any other state. The Defense of Marriage Act provides that no state need acknowledge a same-sex marriage granted in another state. Nevertheless, Vermont has recently adopted a domestic partnership act (H. 847) that grants most of the benefits of traditional marriage to same-sex couples. Since no other state currently provides for domestic partnerships, the enforcement in other states of the rights granted by Vermont remains questionable. All that can be said with certainty is that domestic partnership arrangements promise to be a rich source of future litigation.

Equality and Citizenship Status. Although it may seem ironic in a nation of immigrants, immigration policy and the legal status of immigrants have often been hotly debated in American politics. In recent years, the debate over the rights of both legal and illegal immigrants has gained new urgency. The state of California, a major destination for both legal and illegal aliens, has spearheaded this re-examination of the legal status of immigrants. On November 8, 1994, California voters opened a nationwide debate over the rights of illegal aliens by adopting Proposition 187. Among its many provisions, Proposition 187 required police officers, health care professionals, social service workers, and public school teachers to verify the immigration status of persons with whom they came in contact and report to state and federal officials any individuals lacking proper documentation. The proposition also denied health care, education, and social services to those in the country illegally. This broad denial of benefits and services to illegal aliens raised legal issues that had never before been fully

addressed. In 1982 the U.S. Supreme Court, in *Plyler* v. *Doe,* had ruled unconstitutional a Texas law that allowed local school districts to deny educational services to children illegally in the country.[89] Proposition 187 went well beyond the *Plyler* decision in denying public services. Virtually all the provisions of Proposition 187 were declared unconstitutional by a federal district court, in 1998.

Many of the goals embodied in Proposition 187 were given federal expression by the Welfare Reform Act of 1996. Hailed as "the end of welfare as we know it," the act, among other things, terminated both Supplementary Security Income and Medicaid benefits to both legal and illegal aliens. A year later, Congress restored these benefits for most legal immigrants who were in the country when the legislation went into effect. The legal problems surrounding citizenship and immigration status are likely to continue as major political issues.

Affirmative Action

Affirmative action
A set of procedures that attempts to correct the effects of past discrimination against minority groups. It can include specific goals and quotas for hiring minority applicants.

Affirmative action is a set of procedures that attempts to correct the effects of past discrimination against racial minorities and women. In its least controversial form, affirmative action seeks only to ensure that members of minority groups are fairly considered for educational and employment opportunities. Much more subject to dispute are affirmative action plans that establish specific goals and quotas for hiring minority applicants. Attacked by opponents as reverse discrimination, such plans have increasingly provoked criticism.

In its first full review of the affirmative action issue, *Regents of the University of California* v. *Bakke* (1978), the Court sent mixed signals as to the constitutionality of affirmative action measures. In 1973 and 1974, Alan Bakke had sought admission to the medical school at the University of California at Davis. Both times he was denied admission, even though the school accepted others with lower test scores under its special admissions program for disadvantaged students. Bakke finally sued the school, claiming that he was a victim of reverse discrimination.

A majority of the justices agreed with Bakke and ordered the school to admit him. They argued that because it lacked a history of racial discrimination, the medical school could not establish numerical quotas for minority students. It could not, as was done on the Davis campus, set aside seats for minority candidates. The Court held, however, that the school could take minority status into account when deciding on admissions; to ensure a diverse student body, the university could treat the applicant's status as a member of a minority group as a plus.[90]

Even though in the *Bakke* case the Court seemed to conclude that affirmative action was constitutional, the confusion surrounding the decision encouraged opponents to continue challenging affirmative action programs. During the Reagan administration, the Department of Justice repeatedly argued that affirmative action programs were unconstitutional. In the government's view, remedies for discrimination must always be limited to the actual victims of discrimination and not be applied to all members of a class subjected to discrimination. Initially, the Court rejected the Reagan administration's argu-

CLOSER TO HOME



Civil Rights and Liberties in State Constitutions

With such a strong focus on the Bill of Rights and the Fourteenth Amendment, it is easy to forget that state constitutions also provide for individual rights and liberties. Indeed, state constitutions often give more extensive and explicit guarantees than the U.S. Constitution. However, the attention paid to state guarantees declined substantially in the 1960s, as the Warren Court, applying selective incorporation, federalized criminal procedure, required states to respect national standards of basic freedoms, and applied the Supreme Court's interpretation of the equal protection clause across the nation.

In the 1970s, the U.S. Supreme Court became more conservative in its approach to civil rights and liberties. Many states responded by developing what has been called the "new judicial federalism." Dissatisfied with the conservative trend of the Burger and then the Rehnquist Court, state courts began to be more assertive in interpreting their own constitutions. As the U.S. Supreme Court has often recognized, state courts may interpret their own constitutions in ways that go beyond the minimal requirements of the U.S. Constitution.

For instance, in the 1986 case of *Bowers* v. *Hardwick,* the U.S. Supreme Court ruled that state laws criminalizing homosexual sodomy do not violate any constitutionally protected right. Nevertheless, courts in more than a half dozen states have ruled that such laws are unconstitutional restrictions of liberty guaranteed by their own state constitutions. Similarly, although the U.S. Supreme Court has refused to rule that reliance on property taxes to fund local schools violates the equal protection clause of the Fourteenth Amendment, almost half of the state supreme courts have considered such challenges. Relying on their state constitutions, three states—California, Massachusetts, and Connecticut—have expanded a woman's right to an abortion beyond that guaranteed by the U.S. Supreme Court. These states have even required state funding for abortions.

Of course, state courts are often guided by the more explicit language contained in their constitutions. The right to privacy is not specifically mentioned in the U.S. Constitution, but ten state constitutions have an explicit guarantee of privacy. Perhaps more surprisingly, given the failed attempt to amend the U.S. Constitution, seventeen state constitutions contain an equal rights amendment that expressly forbids sex-based discrimination.

On the lighter side, California's constitution guarantees the right to fish, while New Hampshire's ensures the right to revolution.

Even this brief sampling of the array of constitutional provisions and interpretations demonstrates the vitality of state governments in American life. Guaranteeing the rights and liberties of individuals is not simply a function of the U.S. Supreme Court or the U.S. Constitution; states also play an important role.

ment that affirmative action was inherently unconstitutional. In 1995, however, the Court dealt affirmative action programs a severe blow when, in *Adarand Constructors, Inc.* v. *Peña,* it ruled that federal programs that classify people by race, even to serve remedial purposes, are to be presumed unconstitutional unless those classifications serve some compelling state interest. Although the *Peña* decision does not necessarily void all affirmative action programs, it certainly places all such plans in doubt.

Since the *Peña* decision, voters in California and Washington have adopted initiatives ending all affirmative action programs in their states. Additionally, affirmative action in higher education has been ended in Texas and Florida. However, although affirmative action programs are embattled, especially those that have some type of quota system, they do have their supporters. Affirmative action will continue to be a highly divisive issue because it represents a basic conflict inherent in Americans' ideas about equality.

Conclusion: Absolutes and Qualifications

In this chapter, we have seen how inaccurate and inappropriate the myth of absolute liberties is. As we have noted, the Supreme Court—the federal institution most directly responsible for reconciling conflicting values—has never accepted this myth. For many citizens, however, the myth lives on in regard to First Amendment freedoms and occasionally inspires movements to thwart the Supreme Court by amending the Constitution.

There is little public belief in this myth when it comes to the liberties of criminal suspects, however. The Court has tried to balance the majority's demand for protection from crime against appropriate constitutional protections for suspects. A society that disregards the rights of defendants risks creating a police state that ignores all individual rights. Yet all societies must be able to prevent lawless behavior.

Finally, we have seen how in recent years the Court has recognized the reality behind the myth of guaranteed equality. Using the equal protection clause of the Fourteenth Amendment, it has done much to ensure civil rights for African Americans, although equality is yet to be achieved. But the Court has not expanded the concept of equality to cover other minority groups. Thus women, the aged, the handicapped, homosexuals, and others still face considerable discrimination.

Summary

1. Civil liberties are the protections individuals have against excessive or arbitrary government interference. Civil rights are guarantees by the government of protection against discrimination or unreasonable treatment by other individuals or groups.
2. Originally, the Bill of Rights did not restrict the actions of state governments. Through a process known as selective incorporation, however, the Supreme Court has made most provisions applicable to the states as well as to the national government.
3. Rejecting the position that all forms of speech are protected, the Court has attempted to balance conflicting interests, using a series of tests that consider the impact of the speech.

Sometimes the Court has favored free speech, but at other times it has not.

4. As with freedom of speech, the Court has rejected the argument that freedom of the press is an absolute; however, the justices have been unwilling to permit prior restraint, that is, blocking a publication from reaching the public. After publication, the press can be punished for libel or obscenity.

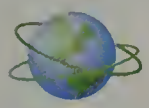
5. The First Amendment prohibits the government from establishing a religion, and it also guarantees the free exercise of religion. The Supreme Court's interpretation of these provisions has generated considerable controversy in American society.

6. Although it has made some exceptions recently, the Court continues to require that a suspect in a crime be allowed representation by counsel and be informed of that right, as well as of the right to remain silent. Evidence seized illegally cannot normally be used to convict, although the Supreme Court has recently made broad exceptions to that rule.

7. Racial and sexual discrimination has burdened many in American society. The struggle for equality has led to the end of the separate-but-equal doctrine and some decreases in discrimination, particularly in education, public accommodations, and voting. But African Americans and women are still subject to discrimination.

8. Even as Americans struggle with racial and sexual discrimination, new equal protection claims command the nation's attention.

9. Among the most controversial of the equality issues is affirmative action. Though many view it as an essential means to ensure equality, others attack it as reverse discrimination.



Net Work

Do you want to research court decisions? One of the best places to start is **http://www. findlaw.com.** This site provides the full text of all federal court decisions, including those of the U.S. Supreme Court, and also includes the decisions of selected state courts. U.S. Law Week **(http://lw.bna)** is another useful source for recent federal and state court opinions.

As an activity, explore a particular issue of civil rights or civil liberties that interests you.

- Begin by familiarizing yourself with the positions of legal interest groups. You might, for instance, look at the arguments advanced by the American Civil Liberties Union **(http://www.aclu.org).** Then check out the Southeastern Legal Foundation **(http://www.southeasternlegal.org).** Because these two organizations litigate many of the same issues, often in opposition to each other, you can compare and contrast their arguments.
- For further information, check out the position taken by the U.S. Department of Justice. If the issue you have chosen was argued before the U.S. Supreme Court, you can find the full text of any briefs submitted by the U.S. government at **http://www.usdoj.gov/org.** If the issue was litigated by a U.S. court of appeals, you can find the government's brief before that court at **http://www.usdoj.gov/org.** Finally, if you go to the Findlaw site listed above, you can, for any recent case, click on all the briefs (including third-party briefs) submitted on behalf of both sides. Read these briefs and use the Web to locate the parties preparing them. How much can you learn about these groups?

CHAPTER 5

Public Opinion and Political Participation

- What Is Public Opinion?
- How We Develop Our Beliefs and Opinions

Agents of Political Socialization: Family and friends, school, the media, religion, and political culture
Adult Socialization: Friends, the media, circumstances

- How Polls Work
- The Paradox of Public Opinion
- Group Opinion: Diversity and Uniformity
- Public Opinion and Public Policy
- Avenues of Political Participation

Acting on Opinions: A variety of responses
What Influences Participation: Education, involvement, age level
A Closer Look at Women, African Americans, Hispanics, and Asian Americans: Mixed records

- Conclusion: Many Minorities, Much Activity

MYTH & REALITY

Is there such a thing as majority opinion?

MYTH & REALITY

Do you believe in witches? Do you believe in ghosts? Do you think it would be scarier to your friends and neighbors if you dressed up for Halloween as a politician or as a journalist? Strange questions, no doubt, for an American government textbook. But they are questions that have been asked by reputable polling organizations, and that Americans have opinions on. (You may find it interesting that 19 percent of Americans believe in witches; 30 percent believe in ghosts; and 62 percent believe that dressing up for Halloween as a politician is scarier, compared to 22 percent who think that a journalist costume is scarier—16 percent "didn't know.")[1] And while attitudes about witches and ghosts may have relatively little to do with American government and politics, public opinion and polls do play a central role in the shaping of politics and policy in the United States.

CRITICAL THINKING

Is there such a thing as majority opinion?

The role public opinion plays in public policy decisions often presents a complex problem for elected officials. In general, policymakers feel compelled to pay close attention to public opinion on an issue, whether that opinion is held by a majority of the public or simply a plurality, the largest percentage among those polled, but not a majority (over 50 percent). Yet public opinion is often difficult to assess, and survey results often appear contradictory. More often than not, pluralities rule the day. Such was the case early in 1997, when public opinion seemed ambivalent about the importance of a balanced budget amendment—an amendment that would need the support of two-thirds of the Senate and the House of Representatives before it could be ratified by three-fourths of the states. While a *New York Times*/CBS News poll showed strong support for a constitutional amendment,[2] another poll taken that same month gave a mixed message about the degree of public support for such an action. A plurality of the public, 49 percent, indicated that it did not "think requiring the Federal Government to balance the budget is the kind of issue you would like to change the Constitution for" (39 percent said it was). An earlier poll had found that seven out of every ten Americans would forgo balancing the federal budget in order to prevent major cuts in social security.[3] Ultimately, such ambivalence in public opinion on this issue helped thwart any action by Congress early in 1997.

Polls have become ingrained in the political process—not only in predicting election outcomes, but also as a tool that politicians, scholars, and the media use to measure and assess the public's opinions on everything, from its favorite presidential candidate to its attitudes on specific issues or laws. That reliance on polls comes about, in part, because of the widespread misconception that public opinion is majority opinion. Elected officials who claim that they are following majority opinion when they vote on legislation share this misconception. This view of public opinion is strongly influenced by a widely held myth: the myth of majority opinion.

The *myth of majority opinion* occasionally surfaces in high school civics books. According to that myth, public opinion "is generally used to refer to the opinion held about any issue by a majority of the people."[4] In reality, the public cannot be viewed as a monolith with a single, or even a majority, viewpoint. Rather, the public must be viewed more realistically as a mixture of groups with varying



Demonstrating Against California Proposition 22

Americans hold opinions on many issues, opinions that often vary in intensity, salience, stability, and direction. This was the case recently in California where public opinion varied widely regarding Proposition 22, which proposed to restrict the legal recognition of gay marriages. Individuals chose many different means of expressing their support or opposition, including hanging signs on highway overpasses.

viewpoints that typically arrive at a consensus through compromise. Such compromise potentially allows government to produce reasonably satisfactory public policies. On many issues, public officials must balance a diverse set of opinions voiced by a variety of groups. In effect, "majority opinion" is often unclear, unstable, or nonexistent.

In this chapter, we look at the origins of public opinion and its content. By understanding the facts behind the myth of majority opinion, you can gain a sense of how the public influences the decisions made by government.

We also examine different forms of participation in the political system, for it is often the strength and intensity of public opinion that lead to political activism and participation on the part of citizens. Many journalists, social scientists, and others argue, based on low voter turnout, that citizen participation in politics in the United States is very low. However, participation in politics can take many forms other than the act of voting, from joining the school board, the PTA, or other community groups to attending political rallies and discussing politics with family and friends. It is important to examine not only the origins and content of public opinion but also the many ways in which Americans act on their beliefs and opinions.

First of all, however, we define public opinion and describe its characteristics. Then we discuss the way political beliefs develop and the use of polls in measuring public opinion. Finally, we turn our attention to different avenues of political participation and the factors that promote activism in the political system.

CRITICAL THINKING

Is political public opinion always intense, salient, and stable?

What Is Public Opinion?

V. O. Key, a respected scholar of public opinion, said that "to speak with precision of public opinion is a task not unlike coming to grips with the Holy Ghost."[5] And yet no democratic government can afford to ignore public opinion, for it is public opinion that links the values, demands, and expectations of the citizens of any country to the actions of their government. What then is this elusive concept? Stated formally, **political public opinion** is the collective preferences expressed by people concerning political issues, policies, institutions, and individuals. In using the term *collective,* we are arguing that public opinion is not "majority" opinion but, more precisely, a collection of opinions that generally reflect a variety of beliefs on a given issue or problem.

Political public opinion The collective preferences expressed by people on political issues, policies, institutions, and individuals.

Opinion intensity The strength of one's opinion about an issue.

Opinion saliency One's perception of the importance of an issue.

Opinion stability The degree to which public opinion on an issue changes over time.

Opinion direction One's position in favor of or against a particular issue. Much of the time there are various shades of support for an issue, with no clear and precise direction of public opinion.

Public opinion varies in **intensity, saliency, stability,** and **direction.** Not every issue evokes intense feelings, and not every issue is equally salient or stable. In addition, public opinion varies in terms of direction, that is, whether it is in favor of or against a particular issue. Much of the time there are various levels of support for an issue, with no clear and precise direction of public opinion.

For example, many Americans share a concern about the treatment of laboratory animals. But few feel intensely about this issue, and many may not view it as a salient or relevant issue, either because it matters little in their everyday lives or because they believe that other issues are more important to focus on. In contrast, most people feel strongly, or intensely, about unemployment and high interest rates. These issues are salient, or important, to them because they affect them directly. On other issues—for example, abortion—there are so many shades of opinion among those generally in favor or against that the policy direction supported by the public is unclear.

Public opinion also varies in stability. For example, one poll dealing with national health care found that 61 percent of those surveyed were "willing to pay higher taxes so that all Americans have health insurance that they can't lose, no matter what." A survey taken just one week later found 65 percent of the respondents to be against "raising additional money from taxes" to pay for a national health care plan.[6] The stability of public opinion over longer periods of time also fluctuates. In 1993, over 50 percent of the public thought the most important problem facing the nation was the economy and jobs. By the beginning of the year 2000, only 4 percent of the public believed the economy and jobs were the most important issue.[7] Thus, far from being stable, public support on many issues, especially on difficult issues, is often vulnerable to the expectations and demands of the people. On less complex and confusing matters, however, such as public funding of congressional campaigns or federal funding of higher education, public opinion has remained generally strong and favorable over the years.

Many public officials use measures of intensity, saliency, stability, and direction as a guide to the public's political preferences. If a majority, or even an active

minority, of the public seems indifferent, or if opinions are unstable and shifting, officials may discount the public's views or not act at all. In contrast, salient issues that arouse intense feelings and popular passions are likely to generate action.

CRITICAL THINKING

Does television shape and influence all of our opinions about politics?

How We Develop Our Beliefs and Opinions

What factors influence the intensity and stability of public opinion? People's long-term political convictions—particularly whether they think of themselves as Democrats or Republicans—constitute one important factor. Some of the other key determinants are people's views on the role of women and minorities in politics, the value of compromise in the political process, the appropriate use of money in political campaigns, and the effectiveness of the democratic process. When we recently asked our students about their views on terrorism, we found that most based their opinions on such long-term values as the sanctity of life, concern about the random killing of innocent human beings, and faith in the democratic process. These beliefs affected even students who felt some sympathy for the political concerns of terrorists in the Middle East and other parts of the world.

Political ideology
A pattern of complex political ideas presented in an understandable structure that inspires people to act to achieve certain goals.

Political culture
A set of values, beliefs, and traditions about politics and government that are shared by most members of society. Political culture in the United States includes faith in democracy, representative government, freedom of speech, and individual rights.

Political socialization
The process by which individuals acquire political values and knowledge about politics. It is strongly influenced by people with whom the individual has contact from early childhood through adulthood.

How do long-term political values and beliefs develop? According to social scientists, they are based on the different experiences that people undergo throughout their lives. Growing up or living in Boston, Tampa, Pittsburgh, Houston, Cincinnati, San Diego, or Oklahoma City is very different from growing up or living in rural Wyoming, Texas, Vermont, or Appalachia. These differences translate into regional variations in what people believe and value; further differences in opinion derive from gender, race, class, and other factors.

As we indicated in Chapter 1, political ideologies frequently shape our attitudes and opinions about specific political issues and institutions. As the political scientist Max Skidmore suggests, "**Political ideology** is a form of thought that presents a pattern of complex political ideas simply and in a manner that inspires action to achieve certain goals."[8]

Most Americans have a common, or core, **political culture**—that is, a set of shared values, beliefs, and traditions with regard to politics and government. These shared values include a general faith in democracy, in representative government, in the free-market system, in freedom of speech, and in the rights of individuals. The process by which people acquire these important values and gain knowledge about politics is known as **political socialization.** It is strongly influenced by persons with whom people have contact from early childhood through adulthood.

Agents of Political Socialization

Children are influenced by many variables as they grow up and are exposed to the political world around them. They learn from songs, the celebration of

holidays, the honoring of heroes, and a variety of patriotic rituals that we as Americans practice. Some institutions play a particularly strong role in our acquisition of political values and knowledge.

Family and Friends. Families, especially parents, transmit to their children basic attitudes, beliefs, and values that mold their children's views of the political world. These general values include perceptions of right and wrong and attitudes toward authority figures—parents, teachers, police officers, judges, and political officeholders. They also include perceptions of one's **political efficacy,** that is, one's ability to have an impact on the political system. Family and friends also have an impact on our attitudes about the political system, including how trusting or cynical we may be toward government and politicians, and how alienated from government we may feel.

Political efficacy The perception of one's ability to have an impact on the political system.

One specific belief often passed from parent to child that is particularly important in understanding political opinions and behavior is **party identification,** or whether people think of themselves as Democrats, Republicans, or independents. Studies in the 1960s and 1970s found that children have a strong tendency to adopt the party identification of their parents. Despite the significant number of eighteen- to thirty-year-olds who call themselves political independents, children tend to choose the same party as their parents when both mother and father share the same identification.

Party identification The tendency of people to think of themselves as Democrats, Republicans, or independents.

Peer groups and friends have relatively little influence on a person's party identification or voting behavior at the age of eighteen. As we get older, however, our peers tend to reinforce our already established beliefs because we tend to associate with friends and colleagues who share similar values and attitudes.

School. Another institution that potentially has a great impact on political socialization is the school. At any given time, about a quarter of the population is enrolled, full or part time, in degree-granting educational programs. Public schools teach such political virtues as patriotism, compliance with the laws, the importance of voting, and the peaceful changeover of presidential administrations. By repeating many of the lessons we learn at home regarding our beliefs about government, the school reinforces many of the values we already hold about politics and government.

The amount of schooling a person has greatly influences the way that person forms opinions and views the political world. There are differences between the better educated and the less well educated on a wide range of attitudes and behavior. Better-educated men and women know more about politics. Those who have been to college are more likely than others to hold liberal views on civil liberties and rights, foreign policy, and social questions.[9] Education also brings confidence that one can affect political and government policy—what we earlier called political efficacy—which leads to a relatively high level of participation in politics.[10]

The Media. The media, particularly television, are also important socializing agencies. Ninety-eight percent of households in the United States have at least

I Pledge Allegiance

Like schoolchildren all over America, these second-grade students in Austin, Texas, begin their day with a recitation of the Pledge of Allegiance. Schools are an important influence in learning about politics, often reinforcing such political virtues as patriotism and support of our government system.



one television. The average child watches close to three hours of television a day, and 58 percent of families watch television during meals.[11] Because the average family television is on about seven hours a day, its potential effect as an agent of political socialization is enormous. But what is its actual influence?

CRITICAL THINKING

Do elected officials always rely only on polls to shape and determine public policy?

Although television teaches and reinforces general beliefs and attitudes,[12] it has limited political impact, chiefly because such a small proportion of programming has direct political content. For example, in 1952, television network coverage of the Republican and Democratic conventions averaged about 60 hours. Forty years later, in 1992, the average coverage had been reduced to less than 8 hours.[13] During the 2000 presidential primaries and the general election, only a relatively small share of the television campaign coverage focused on policy issues; instead, most of the coverage focused on candidate character and the "horse-race" nature of the campaigns—who was ahead and who was behind.

Even if the content of television emphasized governmental and political news to a greater extent, there is no guarantee that it would have a greater political impact on the public. For example, among eighteen- to twenty-four-year-olds, only about 7 percent watch the early network evening news and less than 1 percent watch the late-night evening news in any week, the lowest viewing rates among all age groups. Fewer than 3 percent of eighteen- to twenty-four-year-olds watch news specials or read a newspaper daily.[14]

Clearly, the media in all their forms, including broadcast and print, play an important role in the socialization of Americans. But a careful examination of

that role suggests that its impact is varied and dependent on our viewing and reading habits. (We say more about the impact of the media, including the press, in Chapter 9.)

Religion. Religion can often serve, both directly and indirectly, as an important agent of political socialization. Indirectly, religion teaches morality and values—values that are often also learned from family, schools, and the media—that can apply to the way we think about government and politics. Later in life we may view the acts of politicians through the "value lenses" afforded us by attending a church, synagogue, or mosque of our choice. Religious institutions also take overt positions on political issues that may affect our political beliefs. Some denominations, for example, strongly oppose abortion and voice that position in political campaigns. Others support a woman's right to choose an abortion. An individual's religious training can influence his or her attitudes about many political issues and thus have an impact on the political socialization process.

CRITICAL THINKING

Are Americans cynical about all aspects of the American political and governmental system?

Political Culture. Although Americans share a common political culture, a variety of political subcultures flourish in this vast country.[13] Individuals who grow up and live in one region have different religious, ethnic, and racial backgrounds and customs and undergo different economic and social experiences from those living in other parts of the country. A carpenter who grew up and still lives in the rural poverty of West Virginia is far less likely to view the political system as responsive than is a lawyer who grew up and prospered in Florida, a state that has experienced great economic growth. Such influences help shape the way a person views the political world.

Indeed, variations in life experience inevitably result in differing political, social, and economic views. The work of pollsters and public officials would be made easier if the myth of majority opinion were true. But reality, it seems, is never that simple.

Adult Socialization

Not surprisingly, political socialization is not just a childhood experience. As parents' influence declines, coworkers, neighbors, and friends reinforce—and sometimes shape—adults' opinions. Television, of course, affects adults' political views more than children's because adults rely on it for the news more than children do. And a variety of additional media—newspapers, magazines, and radio—provide wider exposure to political information.

In addition, adults bring their own established ideas to their assessment of new situations. They are also likely to be influenced by the current conditions of their life. For example, parents may see more merit in a tax increase to support local schools than do childless adults. Thus the development of public opinion is clearly a process that continues throughout adulthood.

How Polls Work

CRITICAL THINKING

Within a given ethnic, religious, or racial group, do all members share the same political opinions on all issues?

Informal public opinion surveys date back to 1824, when a reporter from the *Harrisburg Pennsylvanian*, standing on a street corner in Wilmington, Delaware, asked 532 men whom they planned to vote for in the presidential race that year. But it was not until the 1930s that George Gallup and Elmo Roper began to experiment with scientific measures of public opinion. By taking into account differences in age, gender, ethnic background, race, religion, social class, and region, pollsters such as Gallup and Roper were able to measure opinion on many issues with a high degree of accuracy.

Random probability sampling A method by which pollsters choose interviewees, based on the idea that the opinions of individuals selected by chance will be representative of the opinions of the population at large.

Pollsters choose their interviewees by the method of **random, probability sampling,** in which every person in the population theoretically has an equal chance of being selected. While that system of sampling is not perfect (in any population, some individuals have little or no chance of being selected for interview), and the procedure is fairly complicated, the basic idea—that the opinions of individuals selected by chance will be representative of the opinions of the population at large—is highly effective and reliable. Since 1936, for example, the Gallup poll has correctly predicted the winner in all but one presidential election and has been within a few percentage points of the actual results each time.[16]

Straw polls Polls that rely on an unsystematic selection of respondents. The respondents in straw polls frequently are not representative of the public at large.

In contrast, **straw polls** rely on an unsystematic method of selection. People are questioned in shopping centers or on street corners, with little or no effort made to ensure that respondents are representative of the population at large. The results are often inaccurate and unreliable. For instance, in 1936, a highly respected magazine, the *Literary Digest*, using a straw poll of 2.5 million people, predicted that Republican Alfred Landon would defeat Democrat Franklin D. Roosevelt in the presidential election; Roosevelt won overwhelmingly. The *Digest* poll failed because it selected its respondents from telephone directories and automobile registration lists. In the midst of the Great Depression, that sample had too many middle- and high-income individuals and excluded voters who could not afford telephones or cars. Gallup's survey for the same election—his first presidential poll—was quite accurate.

Currently, polls are essential to high-visibility campaigns, including presidential, senatorial, and gubernatorial races. Candidates who can afford their high cost typically survey prospective voters to learn their concerns. In fact, a national or statewide candidate who does not use polls is probably not a serious candidate, or at least does not face serious opposition.

Major television stations and newspapers also survey the public on issues and candidates. When elections are under way, poll results are frequently the bread and butter of the evening news and the daily newspaper. In the months before major elections—and on election night—these reports often have a horserace quality; that is, they focus on who is ahead or behind in a contest. That was true in the 2000 presidential and congressional elections, when the media spent significant amounts of time and money tracking voter preferences. How people feel about the real issues of the campaign often goes unreported or underreported in election coverage.

Many elected officials, including the president, use polls to assess the public's views on a variety of issues. Presidents Carter, Reagan, Bush, and Clinton all employed pollsters and used the results to help increase support for their positions or to fine-tune or eventually abandon policies.

The fact that public officials use polls, however, should not imply that presidential or congressional decision making is based solely on evaluation of public opinion. Although polls are an important source of feedback in making policy decisions, representatives also rely on their own values and on both their own and others' experience, knowledge, and expertise. In effect, polls provide one glimpse of the public's attitudes at the time that the poll is taken. Events, both personal and public, may have a significant impact on those opinions a day, week, month, or year later, making opinions susceptible to change.

What makes a good poll? As the failure of the *Literary Digest* poll demonstrates, the sample must be chosen with care. In addition, questions must be worded in such a way that their form or content does not influence the response. For example, starting a question on a farm issue with the phrase "Most people believe that farms should be family owned" will increase the likelihood that a respondent will agree with what "most people" believe. A more neutral, unbiased opening phrase, such as "People have different beliefs regarding support for family-owned farms," avoids the suggestion, on the part of the pollster, that there is a right and wrong answer to the question.

Good questions are another important ingredient. Many surveys ask many questions and allow for only brief answers, often a simple yes or no. Although such questions may improve the efficiency of the survey, they do so at the expense of more thorough information. Consequently, the intensity, saliency, stability, and direction of opinion may be distorted and complex shades of opinion may be obscured, giving support to the myth of majority opinion when, in fact, there is no such view.

Finally, pollsters must measure what people know about an issue, as well as what their opinions are, in order to distinguish between informed and uninformed responses. Many Americans recognize the difficulties of keeping up with the issues. In recent polls, as many as 71 percent of the public indicated that government was "so complicated that a person like me can't understand what's going on."[17] Americans continue to find government often baffling and mysterious. Still, lack of knowledge and failure to understand do not keep people from answering questions. In a poll taken at the beginning of President George Bush's administration in 1989, 83 percent of those interviewed rated the president's cabinet appointments as excellent, good, fair, or poor. Yet when asked to name a cabinet member, four out of five could not name a single appointee.[18] Even when the public is ignorant on an issue, it is hardly shy about expressing an opinion about it.

Poorly designed and poorly administered polls provide inaccurate and misleading findings. But when carefully done, professional polls can help link citizens with the officials who represent them, amplifying, not distorting, the public's voice.[19]

The Paradox of Public Opinion

In the 1950s and early 1960s, Americans viewed government optimistically. Seventy-eight percent of Americans felt that the national government tended to improve conditions in the nation.[20] The nation had triumphed in World War II, the economy was flourishing, and no domestic or foreign policy problem seemed too difficult to solve.

Starting in the early 1970s and continuing into the year 2000, Americans gradually lost confidence in government. The war in Vietnam, the Watergate scandal and the resignation of President Richard Nixon, the Iran-Contra affair during the Reagan administration, and the impeachment and trial of President William Clinton were all events that fueled the high level of cynicism concerning government and politics held by many Americans.

CRITICAL THINKING

Is the public apathetic about politics?

In 1964, 76 percent of the American people claimed that they trusted and had confidence in "the government in Washington to do what is right" most of the time. As we entered the new millennium in the year 2000, only 29 percent expressed such confidence (see Fig. 5.1). Indeed, almost two-thirds of Americans felt distant and disconnected from government.[21]

The decline in confidence and trust in government has been matched by a rise in cynicism among many Americans regarding the ethics of elected officials.

Public Opinion and Trust in Government

While Americans strongly support our democratic form of government, many citizens remain skeptical about the honesty of many elected government officials. Here, President William Clinton holds a news conference to deny that he had any sexual relations with Monica Lewinski, a White House intern. Not long after, he would admit that he lied at this news conference, thus reinforcing the negative opinions that many Americans have about politicians.



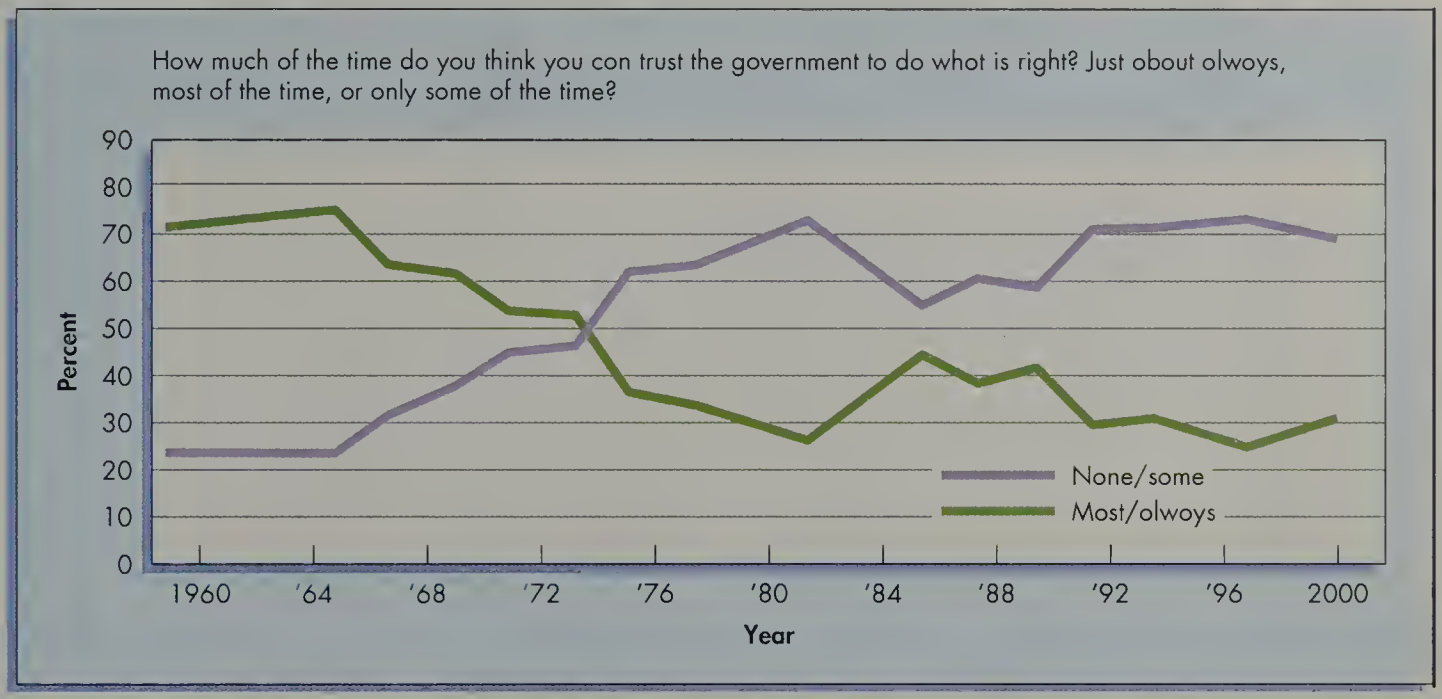


FIGURE 5.1
How Much Do You Trust the Government?

Over the last three decades, Americans' trust and confidence in their government's ability have steadily decreased.

Source: University of Michigan National Election Study (NES) for years 1960–1992; 1996 data from the CBS/*New York Times* poll, December 1996; 1998 and 1999 data from Wake Swell Perry and Associates, November 1999.

A 1994 poll found that 51 percent of the public—as against 32 percent in 1984—felt that "quite a few of the people running the government are crooked."[22] By the 1990s, two-thirds of Americans felt that most elected officials did not care "what people like me think." As we begin the new millennium, the cumulative impact of Vietnam, Watergate, the Iran-Contra affair, the Clinton impeachment and trial, and a number of government scandals at the local and state level seems to have taken its toll.

Do these findings suggest that the public no longer believes in democracy and representative government? Interestingly, the answer is no. Most citizens are proud to be Americans. When asked if they would like to move to and settle in another country, an overwhelming majority—90 percent—say no.[23] A significant majority feel optimistic about the opportunities for getting ahead in their lives.[24] In fact, the legitimacy of the system—that is, the acceptance by the people of the authority of government—has been in jeopardy only once in the nation's history: during the Civil War.

Most contemporary Americans believe that no other country or government provides the opportunities found in the United States. That perception is shared even by minorities who have suffered centuries of discrimination.[25] When Americans were asked in 1999 to look ahead to the year 2000 and the century to follow, 79 percent said they thought government would be more important or equally important, relative to the previous century, in terms of improving the lives of the American people.[26]

CLOSER TO HOME



Strangers in the Night: The National, State, or Local Government?

Over the past decade, the role that the national, state, and local governments should play in our lives has been a point of significant debate for the public, our elected officials, and the federal courts. Much of the sentiment regarding efforts to limit the role of our national government is rooted in our level of trust in government and in our assessment of local versus national problems.

One recent poll found that 35 percent of those interviewed in a national sample felt that they have a "great deal" or "quite a lot" of trust and confidence in the ability of local government to carry out its responsibilities. How does this level of support match up against public opinion regarding state and national government? Thirty-three percent of the public have trust and confidence in state government (a close second to local government), while only 21 percent of the public have trust and confidence in the federal government.

The public's more favorable response to local government is matched by the more positive evaluation that many Americans give to the handling of local issues as compared to issues at the national level. In a series of surveys conducted during the decade of the 1990s, Americans tended to judge the nation "to be more troubled than the neighborhoods and communities that comprise it." When asked to evaluate conditions at the local versus the national level, Americans consistently felt that problems and issues such as crime, education, racism, drug abuse, unemployment, and ethics and moral conditions were better handled at the local level.

Americans feel that the national government can and should play a central role in a number of key areas, including, among others, the protection of civil rights, services to immigrants, and provision of health care for the disabled, poor, and elderly. However, when it comes to areas such as job training, welfare, early education for low-income children, and crime, public opinion favors bringing government closer to home—and that means local and state government.

Source: Quote and data are from Tom W. Smith, "Local v. National: Why Our Neck of the Woods Is Better than the Forest," *The Public Perspective,* June/July 1998, pp. 50–53; additional data from Richard Morin, *Washington Post* National Weekly Edition, February 3, 1997, p. 35; Council for Excellence in Government, survey conducted by Peter Hart, 1999.

Group Opinion: Diversity and Uniformity

The differences both among and within groups in our society further fragment opinion. Political views may differ between men and women, African Americans and whites, young and old. Of course, not all women or all African Americans or all members of any group are necessarily unified in their views. Nevertheless, some generalizations are possible.

CRITICAL THINKING

Are women and members of various ethnic and racial groups passive and apathetic about politics?

Gender. Compared with men, women express greater concern about the problems of poverty and hunger, drug abuse, moral and religious decline, genetic engineering, and international tensions. Men are more concerned about the budget deficit, the cost of living, and the trade deficit.[27] A larger percentage of women than of men consider themselves Democrats, although approximately an equal proportion of men and of women support the Republican party.

Surprisingly, there are no strong gender differences regarding welfare reform, the death penalty, and the right to choose abortion; a majority of men as well as of women support the three positions.[28] In the 2000 elections, Democrat Al Gore received an overall advantage over his Republican opponent, George W. Bush, of 11 percentage points from female voters.

College Students and "Twentysomethings." Despite popular images of youthful extremism, most college students and people in their twenties hold middle-of-the-road political views—opinions that are not much different from those of older generations (see Table 5.1).[29] Their interest in political affairs is weaker, however. A recent survey of freshman college students found that fewer than 15 percent discussed politics and only 26 percent thought it was important to keep up to date with political affairs.[30]

In the last decade, students have moved away from the views held by college men and women of the 1960s and 1970s. Today's undergraduates worry more about their future economic well-being and the right of employers to do drug testing. They also think that there is too much concern for criminals. They show limited support for legalizing marijuana, but they register relatively strong support for the death penalty.[31]

As Fig. 5.2 makes clear, not all their views are conservative, however. Many students favor stronger government action regarding legalized abortions and gun control. Thus the opinions of college students, like those of the rest of the population, present a diversified picture.

TABLE 5.1
The Political Orientation of College Freshmen: The Class of 2003

	Total	Male	Female
Far left	2.8%	3.8%	1.9%
Liberal	21.8	20.2	23.2
Middle of the road	55.6	53.4	57.5
Conservative	18.3	20.3	16.6
Far right	1.5	2.3	0.9

Source: Data from Linda J. Sax, Alexander W. Astin, William S. Korn, and Kathryn M. Mahoney (1999). *The American Freshman: National Norms for Fall, 1999.* Los Angeles: Higher Education Research Institute, UCLA, December 1999, pp. 31, S1, 71.

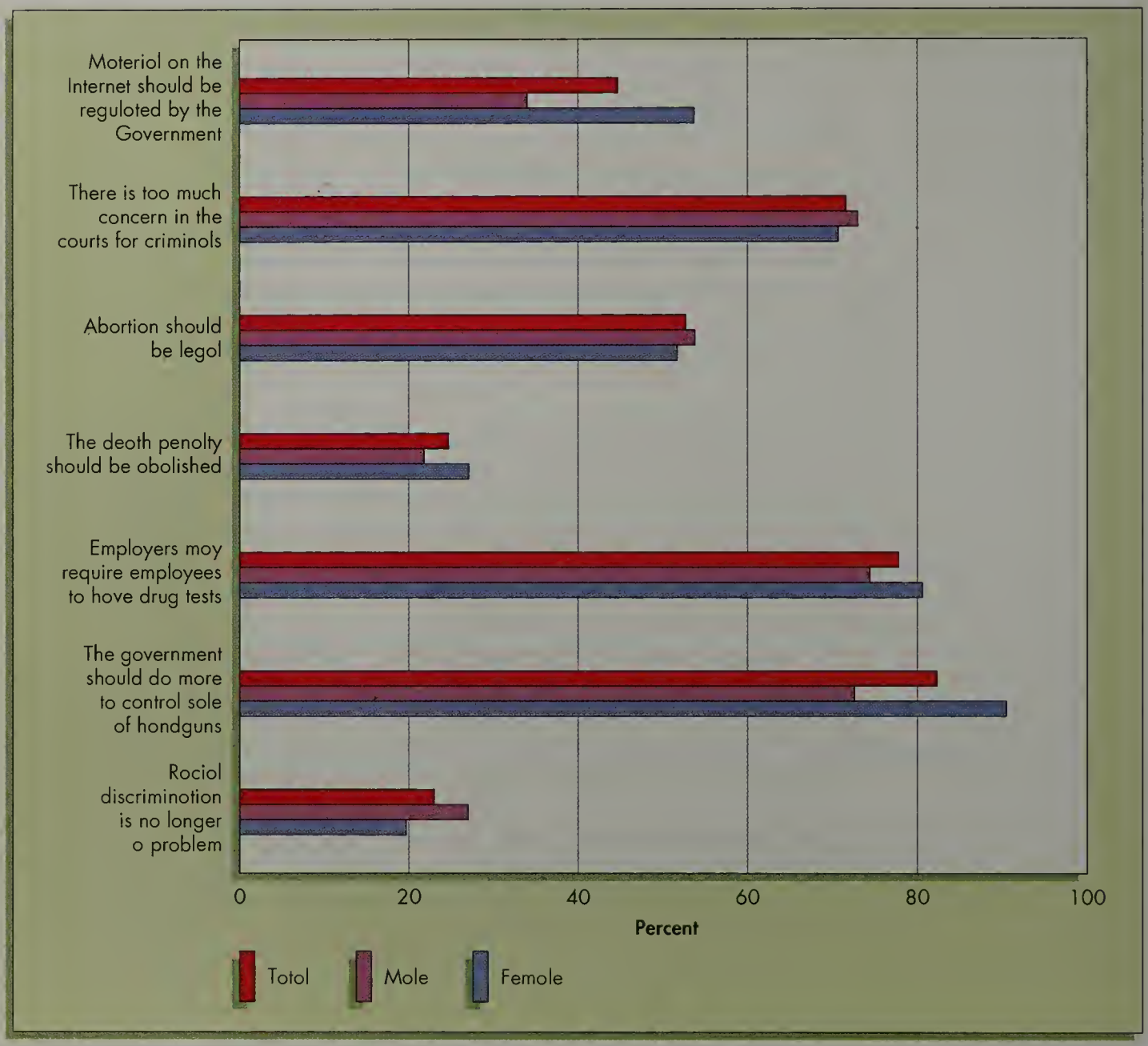


FIGURE 5.2
What Do College Freshmen Think?

Source: Linda J. Sax, Alexander W. Astin, William S. Korn, and Kathryn M. Mahoney 1999, *The American Freshman: National Norms for Fall 1999*. Los Angeles: Higher Education Research Institute, Graduate School of Education, UCLA, December 1999, pp. 32, 52, 72. Reprinted with permission.

Race and Ethnicity. Diversity and divergence also hold true when people are grouped by race and ethnicity, although whites, African Americans, Hispanics, and others manifest some group consciousness on important issues.

Most African Americans feel that they are making economic and social progress.[32] Nevertheless, they cite taxes, welfare reform, and Medicare reform as three key issues facing the nation.[33] Whites agree with that evaluation but differ sharply from African Americans on how best to tackle these problems. Compared with whites, African Americans favor greater government participation in resolving economic and social issues. For African Americans, federal programs remain a key strategy in dealing with civil rights and other pressing problems.

There is agreement across race on many issues. For example, most African Americans and whites favor the death penalty for murder, harsher sentencing of criminals, and school prayer. Both groups also describe themselves as middle-of-the-road politically.[34]

Among whites, Republicans hold a narrow edge over Democrats, whereas African Americans have been more heavily Democratic since the 1940s. Approximately 16 percent of both whites and African Americans described themselves as "independents" in 1950, but by the year 2000 approximately 41 percent of whites and 25 percent of African Americans called themselves politically independent.[35]

Hispanic opinion is difficult to characterize because the label serves as an umbrella for Mexican Americans, Puerto Ricans, Cuban Americans, and others who trace their origins to the diverse cultures of Central and Latin America. Except for Cuban Americans (a majority of whom identify with the Republican party), Hispanics tend to be Democratic in their politics. Over the decade of the 1990s, Democratic presidential candidates received, on average, 68 percent of the Latino vote; Republicans received 28 percent.

Mexican Americans, Puerto Ricans, and Cuban Americans have played a growing role in local and state politics in New York, New Jersey, Florida, Illinois, Colorado, Arizona, Nevada, New Mexico, Texas, and California. It is interesting to note that "collectively, Hispanics, blacks, Native Americans, and Asians are currently a majority of the population in California, Hawaii and New Mexico, while Texas and New York are projected to achieve; 'Minority-majority' status by 2010."[36] Minorities will certainly gain political strength in many regions of the nation as we move through the twenty-first century.

Religion. Although religion does not necessarily shape political beliefs, members of the same religious groups do share opinions. Given their liberal to moderate bent, Jews and Catholics lean toward the Democratic party, an allegiance stemming from the party's recruitment and support of immigrant groups during the late 1800s and early 1900s. White Protestants tend to identify themselves as Republicans.

Within each religious group, however, there are differences on many important issues. Catholics are divided on abortion, public support of birth control programs, and the public funding of parochial schools. Many Jews are divided over the Israeli-Arab conflict and U.S. policy toward the Middle East. A number of Protestant fundamentalist groups oppose a broad spectrum of liberal

government policies, but other Protestants decry the fundamentalist stand on social welfare and nuclear policy as too conservative and reactionary. Once again, majority opinion is difficult to define within groups.

In recent years, some observers have argued that economic and social class influences are more important than religious influences for many Americans.[37] Nevertheless, religion continues to have an indirect effect on political life, influencing tolerance toward disadvantaged groups, moral and ethical opinions regarding political behavior, and conformity with the rules of the system—attitudes related to all the political issues of the day.[38]

Public Opinion and Public Policy

Even though public opinion can often be vague and unstable, it can be informed and strong enough to guide policymaking in our political system. A study on American and British health policy by Lawrence Jacobs reminds us that the public can and does have "a significant impact on broad policy goals and administrative details."[39] Public opinion, even on issues that are complex and difficult to resolve, serves as an important guide for policymakers on a broad range of issues. When public opinion exists on an issue, our elected officials rarely ignore it.

In turn, our elected representatives have the responsibility of enlarging, refining, and helping shape the public will. For the link between public opinion and public policy to be effective, elected officials must present the public with clear and precise alternatives on the issues of the day and engage in public debate over those issues.

Avenues of Political Participation

The development of public opinion is a long and complex process, and having opinions is just the beginning. We must also consider whether Americans act on their opinions by participating in the political system. **Political participation** encompasses a broad range of activities—from learning about politics to engaging in efforts that directly affect "the structure of government, the selection of government authorities, or the policies of government."[40]

Political participation Taking part in any of a broad range of activities, from involvement in learning about politics to engagement in efforts that directly affect the structure of government, the selection of government authorities, or the policies of government.

Most Americans participate in limited ways—for example, by discussing politics with family and friends and by following campaigns, elections, and other political events on television and in the newspapers. Others are more active; they write letters to government officials (the number of letter writers has more than doubled since the 1960s), attend community meetings and legislative hearings, and join in interest-group activities. In 2000, 51 percent of the eligible electorate

MYTHS IN POPULAR CULTURE

Spin City: Sex, Lies, and Political Myths

Ninety-eight percent of households in the United States have at least one television set, and the average family TV is turned on for seven hours a day. Indeed, television is a major form of American popular culture. Americans love being diverted by the "tube," enjoying every type of entertainment from drama to comedy. Not surprisingly, given the amount of time we sit in front of the TV, television programming can and does have its impact on shaping and reinforcing public opinion, including many of our beliefs and opinions on politics and government. How does television treat the topic of politics? Few television programs with political themes treat politics and government gently; more often than not, they focus on what they depict as the universal corruption, fumbling, tomfoolery, stupidity, and misbehavior of politicians.

No television program better depicts these negative themes than the popular comedy *Spin City*, about the fictitious mayor of New York City. The mayor is generally depicted as a fumbling and often stupid elected official, barely able to get through a day without getting into some mischief. In one episode, the mayor jumps into the Hudson River on a dare to prove how much he loves New York. In another episode, after worrying over a report that New York City school kids are out of shape, he addresses a reporter at a press conference as "the ultra-fat guy in the back" and tries to prove that as mayor he's in good physical shape by unsuccessfully attempting to do a push-up at the press conference. In still another episode, the mayor is intimidated at a press conference by the presence of Wolf Blitzer (a real-life reporter who is a correspondent for CNN News). Believing that Blitzer is scouting future potential presidential candidates, the panic-stricken mayor develops a speech impediment and can pronounce only the sound "Ahh." Most of the show, when not looking at the antics of the mayor, focuses on either the stupidity of the staff or their troubled sex lives.

This cynical view of politics and government permeates not only *Spin City* but also many other television comedies and dramas dealing with the subject. In reality, there are politicians and government officials who misbehave, act stupidly, or fumble from one mishap to another. With literally millions of elected and appointed officials serving in the over 80,000 units of government in our nation, it should not be surprising that we are not immune from periodically electing and appointing stupid men and women to serve in office. This is true in any profession.

However, while reality suggests that such individuals exist in the political system, mythmaking also argues that the television, as a form of popular culture, can and does contribute to misrepresented and distorted political public opinion. Many, if not most, elected and appointed officials serve faithfully in office, working hard to resolve complex and difficult problems and providing citizens with sound and thoughtful service. *Spin City*, and television in general as a form of popular culture, magnifies and distorts the negative side of politics and government, generating and reinforcing many myths about the nature of politics in the United States and the people who serve in government, and thus influencing the opinions of many citizens.

voted in the presidential election. In 1998, 36 percent of the eligible electorate voted in the congressional elections. Those who are deeply involved in politics contribute money to campaigns, attend political rallies and speeches, take part in campaigns, and run for political office. A smaller but growing number of people bypass traditional avenues of action and engage in **civil disobedience,** the willful, and at times violent, breach of laws that these people regard as unjust.

Civil disobedience
Refusal to obey civil laws that are regarded as unjust. This may involve methods of passive resistance such as sit-ins and boycotts.

Indeed, one study found "a populace in the United States [that] is highly participatory in most forms of political activity (giving money to political organizations, contacting government officials, etc.) and even more so in nonpolitical public affairs (from a vast variety of organizational memberships to charitable giving and volunteer action)."[41] A recent survey found that over the past two years, 46 percent of the public attended a public hearing or meeting, 45 percent contacted an elected official, 34 percent contributed time or money to a political campaign, and 27 percent participated in a police-sponsored community-watch program. Indeed, in the age of the Internet, 34 percent of the public visited a government web site for information.[42] Research tends to support the idea of relatively high levels of participation by the American people.

For some individuals, however, political inactivity does not necessarily indicate a lack of interest. Threats of violence kept some groups, particularly African Americans in the South, out of politics until the 1960s. Work and family responsibilities can also leave little time for political involvement. For people between the ages of eighteen and twenty-six, adjusting to new academic challenges or to being independent, self-supporting adults undoubtedly contributes to political inactivity. Still others either feel that their participation will have no impact on government or are satisfied with what they see and therefore feel they have no reason for action.

Acting on Opinions

Those who do act on their opinions fall into six general categories, according to political scientists Sidney Verba and Norman Nie.[43] Inactives participate by occasionally casting a vote. Voting specialists vote regularly in presidential, state, and local elections but seldom join in other political activities. Parochial activists vote and contact public officials only when their own self-interest is involved. Community activists work to solve problems in their localities and vote regularly but do not otherwise participate in party activities or elections. Campaigners, the mirror image of the community activists, immerse themselves in partisan politics and campaigns rather than in community organizations. Complete activists engage in activities ranging from community affairs to voting, campaigning, and running for political office.

Verba and Nie's categories represent traditional forms of political participation. What happens when such tactics do not work? In the early 1960s, African Americans in the South organized sit-ins at segregated lunch counters, boycotted buses, and engaged in other acts of civil disobedience. Antiwar protests were a common occurrence during the Vietnam War in the 1960s and 1970s. Since that

time, protest has become an increasingly common form of participation among those who find traditional avenues of action ineffective or closed. In the 1970s and 1980s, farmers marched on Washington, D.C., to protest government farm policies. In the 1990s and early 2000s, both pro- and antiabortion groups marched in cities and towns around the nation, arguing their policy positions. Many of these individuals had never been active in politics before, often not voting in elections. In at least one case, the antiabortion group "Operation Rescue" has advocated violent disobedience, including physically blocking access to health clinics that perform abortions. As you may recall from Chapter 4, many of these groups have also gone to court to try to influence the political system.

Finally, the impact of even limited participation should not be overlooked. In presidential elections, almost 90 percent of the electorate watch programs about the campaigns on television. Two out of every three voters read about campaigns in a newspaper. And a third of the electorate engage in persuading others to vote for or against one of the parties or candidates.[44] These forms of political activity may be less dramatic than voting and running for office, but they represent an important form of participation in the political process.

Despite this evidence, there is certainly room for skepticism, as well as for improvement of Americans' activism. Relatively few people work for parties or candidates. Turnout for presidential elections has dropped over the past thirty years, with only 51 percent of the eligible electorate voting in 2000. Just 36 percent of the eligible electorate voted in the 1998 off-year elections. We cannot ignore the reality that active political participation in the United States is lower than many political observers believe it should be.

Yet this apparent apathy is balanced by activity. When election time rolls around, many political meetings are jammed with people, campaign buttons and bumper stickers decorate lapels and automobiles, and money pours into campaign headquarters. Political parties, particularly at the national level, thrive on millions of small contributions—most under $50; increasingly, many of these contributions are being made to candidates via the Internet. Tens of thousands of people participate in social and political movements aimed at affecting policy on issues that range from government involvement in Eastern Europe and the Middle East to abortion rights. In addition, volunteerism in the United States is alive and well. Americans feel that volunteering time to community service is an essential or very important obligation of citizens.[45] In one recent poll, 73 percent of college students stated that they had participated in some form of volunteer work, ranging from helping the homeless to teaching, religious service, social work, and environmental and health care. The poll also found that 41 percent of college students had volunteered more than ten times.[46]

In fact, historically, Americans have engaged in at least as much campaign and community activity as citizens of many other nations.[47] In a study comparing participation in five democracies—the United States, the Netherlands, Great Britain, Germany, and Japan—the United States ranked first in a variety of activities, including signing political petitions, attending public meetings, contacting officials or politicians, and writing to newspapers.[48] In terms of volunteering and giving money

to nonpolitical public affairs programs, Americans significantly outdistanced France and Germany in the amount of time and financial support contributed.[49]

What Influences Participation

Why do people participate in politics? After all, an individual act of participation rarely has much impact. One answer is that people participate if the action does not take much effort. Sending a check or watching the nightly news is easy. People also participate if they care a lot about the outcome. Black college students who took part in sit-ins at lunch counters and marched in demonstrations in the 1960s had a big stake in the success of the civil rights movement. Likewise, during the 1970s and 1980s, many women (and men) participated in demonstrations and marches for equal rights and opportunities for women. Finally, participation depends on life circumstances. Thus, recent increases in political participation in the South can be attributed to rising educational and socioeconomic levels, as well as to enforcement of voting rights laws; in the past, poll taxes, literacy tests, and other barriers to registration prevented African Americans from voting.

Participation breeds more participation. For example, people who work in community and fraternal organizations are more likely than the average citizen to participate in politics. A strong sense of party identity also seems to encourage activism. Indeed, even such passive participation as having an interest in politics or holding strong opinions on issues and candidates can serve as a catalyst for political action.

Political activism also depends on age. Those between eighteen and twenty-four are less likely to vote or engage in other forms of political participation—for example, discuss politics, work for a political party, or run for political office—than those in any other age group through the age of seventy-five. Proportionally more people aged forty-five and older register and vote in national elections than those younger than forty-five.[50] As we indicated earlier in this chapter, these statistics often reflect the unsettled lives of young people, who are working, starting families, attending school, or adjusting to their status as independent, self-supporting adults. To some extent, too, political activism is a function of the responsibilities of age. As taxpayers, parents, and homeowners, older people have more immediate reasons to get involved in politics.

A Closer Look at Women, African Americans, Hispanics, and Asian Americans

Women. Women have a long history of activism in local and community work; it goes back to Abigail Adams and Judith Sargent Murray during the 1780s and 1790s. Nineteenth-century feminists who fought for equal rights, economic opportunity, and the right to vote included Sarah Grimké, Elizabeth Cady Stanton, Lucretia Mott, and Charlotte Perkins Gilman. Yet women's roles in the partisan political arenas of the time were somewhat limited. In recent years,

Women and African Americans in Public Office

While women and African Americans are still underrepresented in politics, proportional to their numbers in the population, their participation in government has increased significantly over the past twenty years. One active member of Congress, Democratic Representative Sheila Jackson Lee, holds a press conference in her home state, Texas.



barriers against women in national and state politics have diminished. Currently, as party leaders, candidates, voters, and community organizers, women are entering politics in greater numbers. The number of female voters has exceeded the number of male voters in every presidential election since 1964.[51] Their activity at the state and national level has increased significantly.[52]

Since 1975, the number of women holding local or state office has risen dramatically. The 1984 nomination of Geraldine Ferraro as the Democratic candidate for vice president was apparently a breakthrough for women in politics. Two years later an unprecedented 130 women were contesting national and state offices. In the 107th Congress (2001–2002), a record 72 women served in the House of Representatives and the Senate. In 2001, 89 women held statewide elective executive offices across the nation (27.6 percent of the 323 available positions). That same year, 1,663 women were members of the fifty state legislatures (although that constituted only 22.4 percent of the 7,424 state legislators in the United States). Of the delegates to the 2000 Democratic National Convention, 50 percent were women. Female delegates to the Republican National Convention in 2000 totaled 39 percent. In 2001, three women served in President Bush's cabinet, including Ann Veneman, the first woman to serve as Secretary of Agriculture.

With regard to the appointment of women as federal court judges, however, progress has been slow. In recent years, the percentage of women appointed to the federal appeals courts has ranged from 33 percent during the Clinton administration to 5.1 percent during the Reagan administration.[54] Two women presently serve on the U.S. Supreme Court: Sandra Day O'Connor and Ruth Bader Ginsburg.

No doubt, women's activism will keep growing as female elected and appointed officials become role models for other women, and as barriers to the inner circles of politics continue to break down.

African Americans. Discrimination, along with alienation from and lack of faith in the electoral process, has historically contributed to African Americans' low rates of participation in politics. African American voter turnout has increased greatly during the past three decades—in good part because of voting rights laws, key Supreme Court decisions, registration drives, and a rise in educational achievement and economic well-being. In 1960, only 29 percent of African Americans in the South were registered to vote, compared with 61 percent of whites. By the year 2000, approximately two-thirds of African Americans across the nation reported being registered to vote; the percentage for whites was 70 percent.[55]

Since the 1970s, increasing numbers of African American candidates have won political office. In 1970, 1,469 African Americans held local, state, and national offices. By the late 1990s, that number had increased to 8,656, although this still represented less than 2 percent of elected officials in the United States.[56] Besides significantly increasing their numbers as city council members, sheriffs, and county officials, African Americans have won mayoral races in Atlanta, Chicago, Dallas, Denver, Detroit, Los Angeles, Newark, New Orleans, Philadelphia, Richmond, Seattle, and Washington, D.C., and in Oakland, California, and Gary, Indiana. In 1989, David Dinkins was elected the first African American mayor of New York City and Douglas Wilder of Virginia became the first African American governor in the United States. Prominent present or past black officials include Democrats Carl McCall, state comptroller of New York; Minnesota Supreme Court Justice Alan Page (an NFL Hall of Famer); and Congressman Jesse Jackson, Jr., of Illinois and Republicans Ken Blackwell, Ohio state treasurer, and Congressman J. C. Watts of Oklahoma.[57]

There are 39 African Americans serving in the 107th Congress (2001–2003). In 2000, 19 percent of the delegates to the Democratic National Convention and 4 percent attending the Republican National Convention were African American. In 2001, President Bush's cabinet included two African Americans. As with women, however, the record is mixed. Although there are growing numbers of African Americans on the federal bench (over 10 percent of President Clinton's appointments to the federal appellate courts were African Americans), the number of appointments over the past twenty years has represented a relatively small proportion of the total appointments (1.3 percent of President Reagan's appointments and 5.4 percent of President Bush's).[58] The only African American serving on the Supreme Court is Clarence Thomas.

Hispanics. Mexican Americans and Puerto Ricans have also faced major barriers to participation, including language problems, low levels of education and income, literacy tests, and residency requirements. Recently, registration drives in Florida, Texas, and California, where many Cuban Americans and Mexican Americans live, have produced increases in voter turnout. In the 1996 elections,

an estimated 75 percent of registered Latinos voted in the city of Los Angeles and 70 percent voted in the state.[59] During the 107th Congress, 21 Hispanics served in the House of Representatives. And President Bush, in 2001, appointed Mel Martinez as Secretary of Housing and Urban Development. There are 186 Hispanics who serve in the state legislatures. Over 10 percent of President Clinton's appointments to the federal courts of appeals were Hispanic, as compared with 1.3 percent of Reagan's appointments and 5.4 percent of Bush's. Although Hispanic participation is still limited in the United States, the twenty-first century will very likely see dramatic increases in Hispanic activism, particularly in states such as California, Arizona, New Mexico, Texas, Colorado, New York, Florida, and New Jersey, which are experiencing siginificant increases in the number of Latino and Latina voters. Candidates for office recognize the growing size and importance of the Hispanic vote in many parts of the nation.

Asian Americans. Although only limited data are available regarding the political participation patterns of different Asian American groups, some tentative conclusions can be drawn. Most Asian Americans, including Japanese, Korean, Vietnamese, and Filipino Americans, are less likely than either whites or African Americans to participate in the political system. Chinese Americans, however, are as likely to vote as white Americans. It is also true that "members of Asian American ethnic groups are less likely to contact public officials than are whites, but Japanese Americans are more likely to contribute money than are whites."[60] In the 2000 presidential elections, members of Asian American ethnic groups supported Democrat Al Gore with 55 percent of their vote. Republican presidential candidate George W. Bush received 41 percent of the Asian American vote.

Presently, 8 members of the U.S. Congress have Asian or Pacific Island backgrounds. As many ethnic groups from Asia and the Pacific Basin settle in the United States, learn the language, and assimilate into the political system, it is likely that we will see increases in political participation by members of many of these different groups. In 2001, President Bush appointed Elaine Chao Secretary of Labor.

Conclusion: Many Minorities, Much Activity

In this chapter we have looked at the myth of majority opinion. What is the reality behind this myth? Is there a majority opinion? The answer is yes—and no. Many Americans do share beliefs about the political system, including the importance of democracy and representative government, majority rule, and concern for minority rights. An overwhelming majority—in most polls, much more than 90 percent of the respondents—support a democratic form of government. And public officials pay attention to public opinion when it has strength and direction on a given issue.

The myth, however, obscures an important attribute of public opinion: that it is often difficult to define clearly. Public opinion, which is often fuzzy and unstable, is also frequently uninformed and sometimes does not exist at all. It rarely comes packaged in neat, easy-to-understand categories. In this vast and varied nation, differences in religious background, region of residence, education, class, gender, race, and ethnicity produce a broad spectrum of views about the political world. To complicate matters further, even when people have similar backgrounds, they often do not share the same views.

Thus, in defining majority opinion on any issue, policymakers must tread carefully. Often the answers to a single survey question or even a series of such questions do not capture the diversity or ambiguity of public opinion. Clearly, the generalization that there is a majority opinion in the United States on many issues is a myth.

In this chapter, we also discussed political participation in the United States. Americans are frequently criticized for their lack of participation in the political process. That criticism often focuses on the relatively low voter turnout in the United States, particularly when compared with higher turnout figures in many other nations.

We agree that if activism is defined by voting, the American public seems apathetic indeed. But by broadening the definition to include many activities, including learning forms of participation such as political discussions, we depict a reality of a more politically and socially concerned citizen, a citizen that is more active in the political system than previously thought.

Summary

1. Public opinion is defined as the shared evaluations expressed by people on political issues, policies, and individuals.

2. Four important characteristics of public opinion are its intensity, saliency, stability, and direction.

3. Political socialization is the process by which people acquire political values and opinions about the political world. The socialization process is strongly influenced by people and events from early childhood through adulthood. Family and friends, school, the media, religion, and political culture are five important factors that mold our political beliefs and opinions.

4. Polls are a major instrument for measuring public opinion. Poorly designed and administered public opinion polls can provide inaccurate and misleading findings. When carefully designed and administered, however, professional polls offer sound and meaningful information about public opinion. Nevertheless, on many issues a clear and unambiguous majority opinion is often difficult to assess from polls.

5. Americans show a lack of confidence and trust in government and politics but an overwhelming faith in the political system.

6. The opinions of Americans are often influenced by sex and by ethnic, religious, racial, regional, and educational backgrounds, although opinions can and do vary widely within any group.

7. Political participation can range from activities that involve taking part in the learning process about politics to activities that directly influence the structure of government, the selection of government authorities, or the policies of gov-

ernment. Participation in politics in the United States is more extensive if we include not just voting, but all forms of political participation.

8. Minority groups have made some important gains but are still not given opportunities proportional to their numbers. It is likely that we will see increases in political participation and activism by members of many of these groups as we move into the new millennium.



Net Work

Do you want to find out more about public opinion on a given candidate or issue? Two excellent sources for public opinion polls dealing with politics and government are the Gallup Organization (**http://www.gallup.com**) and the Harris Poll (**www.harrispollonline.com**), two of the most respected polling and survey institutions in the nation.

News services are also excellent sources of political information on both public opinion and political participation. Three very good sources are *All Politics* from *Time* Magazine and CNN Television (**http://www.allpolitics.com**), *Roll Call Online* (the Capitol Hill newspaper, at **http://www.rollcall.com**), and *Slate*, a magazine on politics and popular culture (**http://www.slate.com**).

Do you want to find out more about how Americans think about candidates and issues?

- Visit either the Gallup Poll or the Harris Poll web site and see what issues are being surveyed by the pollsters. Find out how your opinions compare with those of Americans in general and those of specific groups of individuals.

Visit any two of the web sites listed above and select an issue that interests you and is dealt with in both polls. Do the polls report similar results? What might explain differences in polling results between polls? Consider the importance of the wording of the question and the dates when the poll was taken.

CHAPTER 6

Political Parties

- What Parties Are and What They Do

The Three-headed Political Giant: The party-as-organization, the party-in-the-electorate, and the party-in-government

- Who Belongs to Major Parties and Why?

In the Driver's Seat: Democrats and Republicans: Different coalitions

A Back Seat in Politics? Independents: Their relative importance

If Parties Are So Important, What Do They Do?: Building coalitions, developing policy, winning elections, organizing government, and mitigating conflict

- American-Style Politics: The Two-Party System

The Winners: The Democrats and the Republicans: Recent party history

Realignment of Parties: Reasons for past shifts in power

Why Two Parties? Four explanations

The Hidden Actors: Third Parties in the United States: Barriers to their development

- Party Structure from the Bottom Up

Local Parties: Organization and activities

State Parties: Their growing role

National Parties: Dealing with competing groups

- Conclusion: Decline or Transformation of Political Parties?

MYTH & REALITY

Is there little difference between the Democratic and Republican parties?

What do you think of political parties? Do you love one party and hate the other? Do you think they're both basically the same? Or have you never really thought about them before?

MYTH & REALITY

It may come as a surprise to you that, like many Americans today, the Founding Fathers were distrustful of political parties. In his farewell address to Congress, George Washington warned his fellow politicians about the "baneful effects of the spirit of party." John Adams, his vice president, complained, "There is nothing I dread so much as the division of the Republic into two great parties, each under its own leader." And in the early 1790s, Thomas Jefferson, often referred to as the father of the American party system, declared, "If I could not go to heaven but with a party, I would not go there at all." The men who helped shape the American democracy felt strongly about this indeed.

Not surprisingly, given that anti-party feelings were so strongly held by the framers, there is no mention of political parties in the Constitution. Today, many college students share the belief of many other citizens that there's "not a dime's worth of difference between the two major parties." Even though a majority of Americans identify to one degree or another with either the Democrats or the Republicans, more often than not they claim that such identifications don't influence their vote for specific offices.

What is the source of this hostility toward political parties? Americans' views of the Republican and Democratic parties seem to stem from two misconceptions: that the parties are alike and that they have little impact on domestic and foreign policy. Indeed, when asked to evaluate the Democratic and Republican parties, approximately 50 percent of the respondents in one survey had unfavorable attitudes about parties.[1]

Apparently, many Americans see limited value in parties even at election time, when two-thirds of the voters indicate that they typically split their ticket, voting for candidates from different parties.[2] Furthermore, approximately two-thirds of the public regard themselves either as political independents or "soft" (weak) partisans.[3] In the words of one observer of political parties, "the public is highly skeptical of the parties and their activities."[4]

CRITICAL THINKING

Is there little difference between the Democratic and Republican parties?

How can we explain this deep-seated skepticism about parties? We argue that public criticism of the Democrats and Republicans reflects the *myth of party irrelevance*. This myth holds that the Democratic and Republican parties are unnecessary, perhaps even worthless, in our political system. If that is a myth, what is the reality? In this chapter, you will learn that the two major parties are different in several important aspects and that parties still matter in the country's politics, even though fewer people now strongly identify with them.

What Parties Are and What They Do

Political parties differ from country to country. In most Western European democracies, for example, parties are highly centralized, stable, and tightly knit

Political Party Appeal

One of the most important tasks of a political party is to recruit new members. Here, both Republicans and Democrats vie for the attention of prospective party loyalists.



coalitions of men and women with commonly held opinions and beliefs. In these countries, parties take clear-cut, sometimes extreme, ideological positions. (As you may recall from Chapter 1, ideologies are coherent sets of beliefs about what government should do.) Illustrative of this are a number of the Scandinavian nations, where strong socialist parties of the Left face a spectrum of ideologically conservative parties on the Right.

CRITICAL THINKING

Are political parties in the United States highly centralized, with power resting at the national level?

In the United States, some minor parties are strongly ideological—for example, the Libertarian party, the Conservative party, and the Socialist Workers party. However, historically, the two major parties, the Democrats and the Republicans, have not strictly based their positions on ideology; rather, they have followed a set of guiding principles, most of which focus on the role that government should play in supporting and enhancing our democratic system. Each party's position includes supporters with a wide range of beliefs about what government should do, and each party seeks to attract a broad spectrum of supporters. Because some of their beliefs overlap, the Democratic and Republican parties may seem alike, especially since they share a strong democratic, capitalist tradition. But they differ on many economic and social issues, and they draw differing proportions of liberals, moderates, and conservatives to their political folds.

Political party In the United States, a coalition of people organized formally to recruit, nominate, and elect individuals to office and to use elected office to achieve shared political goals.

In the United States, **political parties** are coalitions of people organized formally to recruit, nominate, and elect candidates for public office. In addition to organizing elections, political parties are instrumental in running the government, creating and implementing shared political goals through the election of officials to the executive and legislative branches of government, and bringing stability to the political system. As strange as it may seem to many people who are

cynical about political parties, the parties do serve as a major link between the public and government officials.

The Republicans and the Democrats, the two major parties, are decentralized organizations, regulated at the state level.[5] The concept of decentralization is not as confusing as it may seem. In this context, **decentralization** means that many different individuals within the party share the decision-making power. No single individual or organization controls the entire system. The comments of one local party leader perhaps best describe that structure: "No state leader, not even the president of the United States, is going to dictate to us whom we slate for local office. They can't even tell us what issues are important." All state party organizations and most local party organizations operate more or less independently of each other, although the authority of one party organization may overlap that of another. Compared with other nations, the United States has one of the most loosely integrated party systems in the world.[6] The Constitution makes no mention of parties, and Congress has passed few laws restricting party activities. By and large, individual states are free to set the rules for their own state parties' operation, although recent Supreme Court decisions have enhanced the power of the national parties to regulate some aspects of state party activity.

Decentralization A term used to describe the Republican and Democratic parties, meaning that decision-making power is dispersed, the party is regulated at the state level, and no single individual controls the system.

The Three-headed Political Giant

In describing political parties, we might best characterize them as "three-headed political giants."[7] The three heads represent three different alliances of members: the party-as-organization, the party-in-the-electorate, and the party-in-government. As in our relationships with brothers, sisters, or friends, sometimes these three cooperate, and sometimes they pull in different directions.

The **party-as-organization** is small and relatively informal. American party organizations consist primarily of state and county chairpersons and ward and precinct captains (sometimes paid, but more often volunteers) who work for the party throughout the year, recruiting candidates and participating in fundraising activities.

Party-as-organization An entity with few members, primarily consisting of state and county chairpersons and ward and precinct captains, who work for the party throughout the year, recruiting candidates and participating in fundraising activities.

The **party-in-the-electorate** includes all those who identify with the particular party and tend to vote for that party's candidates; some of these may also contribute to its campaigns. Anyone of voting age can choose to be a member of the party-in-the-electorate. American parties depend for their electoral strength on such public support.

Party-in-the-electorate The coalition of everyone who identifies with a particular party and tends to vote for that party's candidates; these people may even contribute to its campaigns.

The **party-in-government** comprises the individuals who have been elected or appointed to a government office under a party label. Contrary to the myth of party irrelevance, parties play a major role in organizing government and in setting policy. For example, when the Republican party gained control of both the U.S. Senate and the House of Representatives in 1995, the Republicans reorganized Congress and supported policies different from those supported by the Democrats.

Party-in-government The individuals who have been elected or appointed to a government office under a party label. They play a major role in organizing government and in setting policy.

If a party is going to be successful, it must attract people like you and me to its fold. Parties need paid and volunteer workers to ring doorbells, distribute

campaign literature, register voters, and staff party headquarters. They need voters who will support the party's candidates, donate money to campaigns, and volunteer their services around election time. Finally, parties need candidates who can successfully run for office and, once elected, work to attain the party's policy goals.

Who Belongs to Major Parties and Why?

Given the high level of skepticism that we've discussed thus far about parties in the United States, it may seem strange for us to ask you the question, "Do you belong to either the Democratic or the Republican party?" Interestingly, for many college students, even those who are cynical about the role of parties, the answer is often yes, although the attachment may often be weak. Despite the widespread belief that the two major parties are alike, almost 60 percent of the population identifies with one or the other. As you can see in Figure 6.1, attachment to the Democratic party is stronger than attachment to the Republican party, although the percentages tend to fluctuate from month to month between elections.[8] Only about one-third of the voters consider themselves independents, and roughly two-thirds of those independents characterize themselves as being closer to either the Republican or the Democratic party.

CRITICAL THINKING

Do people use their political party preference as an important cue in determining whom they will vote for?

What difference does party identification make? Clearly, it often determines citizens' political choices. In a typical election, for example, a voter may face a ballot listing candidates for ten, twenty, thirty, or more offices. Because no one can thoroughly study every issue and every office seeker's record, many voters select candidates on the basis of party affiliation. Sometimes they find, to their disappointment, that a candidate does not represent their views, but the party label often indicates a candidate's political philosophy and positions on issues with reasonable accuracy. As one party loyalist in Michigan recently put it, "If you are a Democratic candidate in this state and don't support labor, you won't be a Democratic candidate for very long."

In the Driver's Seat: Democrats and Republicans

Who are the Democrats and the Republicans? The parties tend to attract different groups of supporters. Democrats maintain their greatest strength among African Americans and Hispanics, Catholics and Jews, women, members of the working class, and individuals over the age of fifty. White southerners were once a critical part of the Democratic coalition, but a majority of them have voted for the Republicans in recent elections, although Democrats still maintain a majority foothold in the South among African Americans.

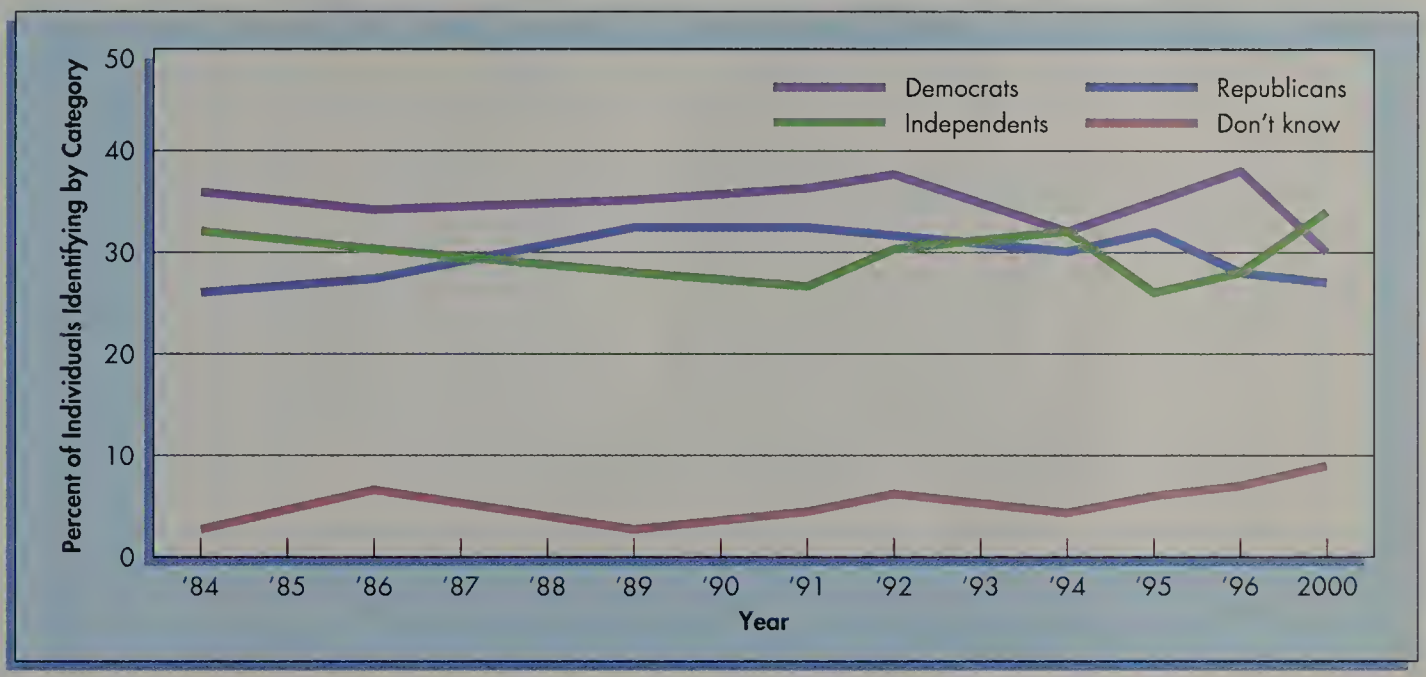


FIGURE 6.1
Changes in Party Identification 1984–2000

Over the past four years between 1996 and 2000, voter identification as Democrats and Republicans has decreased, while the number of declared Independents has increased.

Source: Inter-University Consortium for Political and Social Research, University of Michigan, Ann Arbor, Michigan, 1984, New York Times/CBS poll, December 1986, September 1989, May 1992, April 1994, December 1995, and November 1996, and Pew Research Center, February 2000.

CRITICAL THINKING

Do Republicans and Democrats differ in their support of different policy issues?

Republicans are scattered across the country. They tend to be white, Protestant, and middle to upper class, and their views are comparatively conservative.

The issue that most sharply divides Democrats and Republicans is the role of government. Since the 1930s, Democrats have favored a large government role in such policy areas as social welfare and business regulation. For example, in the 1930s, Democrats took the lead in supporting the social security program. They are also more willing than Republicans to support nonmilitary foreign aid programs and domestic environmental initiatives. Republicans, on the other hand, are more likely to favor reducing taxes and, as a result, government services, including aid to minorities and social welfare programs. They also prefer a lesser government role in regulating business but are more likely than Democrats to support government spending on the military.

Although the polling data presented at the beginning of this chapter describe a public that feels that political parties are irrelevant in the political system, when it comes to which party can best handle a variety of national issues, people tend to view Republicans and Democrats differently. Republicans are

Courting Nontraditional Party Constituents

While African Americans have traditionally supported the Democratic party, Republicans have, in recent years, attracted some African Americans to their ranks. Here, Representative J. C. Watts (R-Oklahoma) speaks at a press conference.



viewed as better at dealing with such issues as reducing crime and taxes, making sure our military defenses are strong, and upholding traditional family values. Democrats are seen as more competent at handling such problems as the protection of social security and Medicare, improving education and the health care system, and protecting the environment.[9] How do your values and issue concerns match up with the party lines suggested by these recent poll findings?

CRITICAL THINKING

Are individuals who call themselves political independents really politically independent?

A Back Seat in Politics? Independents

Independents—individuals who do not identify with any party—often claim that their voting patterns are influenced by issues and leadership qualities, not by party labels. The increase in the number of independents during the 1960s and 1970s, particularly among young voters between the ages of eighteen and twenty-four, and the leveling off of this trend in the 1980s and 1990s parallel the belief in the myth of party irrelevance—that is, the tendency of many Americans to question the ability of parties and government to solve the nation's major problems. The United States has faced a series of major crises in the last three decades, from the Vietnam War, to Watergate, to the impeachment and trial of President William Clinton. Many people, including college students, believe

that all of these events have contributed to a general feeling that the political system is ineffective and to a corresponding increase in indifference toward both parties.[10]

Independents make up an important part of the voting population, especially in presidential elections. There is less evidence, however, that they maintain an independent position in state and local elections.[11] In these contests, voters often lack information on candidates' policy positions or leadership qualities. It is difficult to find many voters who are pure independents and who totally avoid using party labels to identify candidates for whom they will vote.[12] Thus, party label remains one of the best predictors of voter choice in many elections.

A majority of Americans appear to accept the Democratic and Republican parties as relevant symbols, particularly when it comes to voting. In fact, when independents that lean toward one or the other of the two major parties are included, close to 90 percent of the electorate identify to some extent with either the Democratic or the Republican party.[13] As the data in Figure 6.1 indicate, the number of self-declared independents in the United States has leveled off as we enter the twenty-first century.

If Parties Are So Important, What Do They Do?

To no one's surprise, a basic task of political parties is to win elections. Once parties have successfully run candidates for political office, they offer a way to organize the political world and provide elected officials with a means to organize the government. Had parties not developed as a link between the public and the institutions of government, they would have had to be invented.[14] Let us look more closely at some of the functions of parties.

Electoral coalitions Groups of loyal supporters who agree with the party's stand on most issues and vote for its candidates for office.

Building Electoral Coalitions. Parties exist to organize people into **electoral coalitions:** groups of loyal supporters who agree with their party's stand on most issues and vote for its candidates for office. Although individual ties to political parties have weakened over the past fifty years, party labels remain an important electoral symbol in the United States, and for many Americans no other institutions or organizations embrace as broad a range of issues and goals on the national level as the Democratic and Republican parties.

Platforms Statements of party goals and specific policy agendas that are taken seriously by the party's candidates but are not binding.

Developing Public Policy. Parties also play a role in developing positions on what government should do about various problems and in translating those positions into legislation. Research on presidential and state platforms indicates that opposing candidates usually have distinctly different positions on specific issues. **Platforms,** which are statements of party goals and specific policy agendas, are taken very seriously by the candidates and the parties, although

TABLE 6.1

Comparison Between the 2000 Democratic and Republican Party Platforms

Comparing the Platforms *Some of the areas of difference between the platforms adopted by the Republicans in Philadelphia and the Democrats in Los Angeles.*

DEMOCRATS	REPUBLICANS
ABORTION	
"The Democratic Party stands behind the right of every woman to choose, consistent with *Roe v. Wade*, and regardless of ability to pay. We believe it is a fundamental constitutional liberty that individual Americans—not government—can best take responsibility for making the most difficult and intensely personal decisions regarding reproduction."	"We support a human life amendment to the Constitution and we endorse legislation to make clear that the 14th Amendment's protections apply to unborn children. Our purpose is to have legislative and judicial protection of that right against those who perform abortions. We oppose using public revenues for abortion and will not fund organizations which advocate it."
CAMPAIGN FINANCE REFORM	
The McCain-Feingold campaign-finance bill would be "the very first piece of legislation that a President Al Gore will submit to Congress." Other proposals: "tough new lobbying reform, publicly guaranteed TV time for debates and advocacy by candidates, and a crackdown on special interest issue ads" and "a public-private, nonpartisan Democracy Endowment which will raise money from Americans and finance Congressional elections—with no other contributions allowed to candidates who accept the funding."	"Enact 'Paycheck Protection,' ensuring that no union member is forced to contribute to anybody's campaign—and stopping an annual rip-off of $300 million from union families by Washington-based politicos. "Preserve the right of every individual and all groups—whether for us or against us—to express their opinions and advocate their issues. We will not allow any arm of government to restrict this constitutionally guaranteed right."
FOREIGN POLICY AND MILITARY DEVELOPMENT	
"We cannot be the world's policeman, and we must be discriminating in our approach. But where the stakes are high, when we can assure ourselves that nothing short of military engagement can secure our national interest, when we know that we have the military forces available for the task, when we have made our best efforts to join with allies, and when the cost is proportionate to the objective, we must be ready to act."	"The military is not a civilian police force or a political referee... "A Republican president will identify and pursue vital American national interests. He will set priorities and he will stick to them. Under his leadership, the United States will build and secure the peace. Republicans know what it takes to accomplish this: robust military forces, strong alliances, expanding trade, and resolute diplomacy."
MISSILE DEFENSE	
"Al Gore and the Democratic Party support the development of the technology for a limited national missile defense system that will be able to defend the U.S. against a missile attack from a state that has acquired weapons of mass destruction... The Democratic Party places a high value on ensuring that any such system is compatible with the Anti-Ballistic Missile Treaty."	"America must deploy effective missile defenses... at the earliest possible date. These defenses must be designed to protect all 50 states, America's deployed forces overseas, and our friends and allies. ... We will seek a negotiated change in the Anti-Ballistic Missile (ABM) Treaty that will allow the United States to use all technologies and experiments required to deploy robust missile defenses."
SCHOOL CHOICE	
"...what America needs are public schools that compete with one another and are held accountable for results, not private school vouchers that drain resources from public schools and hand over the public's hard-earned tax dollars to private schools with no accountability."	"...we endorse the principles of Governor Bush's education reforms, which will... expand parental choice and encourage competition by providing parents with information on their child's school, increasing the number of charter schools, and expanding education savings accounts for use from kindergarten through college."
GUN CONTROL	
"We need mandatory child safety locks, to protect our children. We should require a photo license ID, a full background check, and a gun safety test to buy a new handgun in America."	"Although we support background checks... we oppose federal licensing of law-abiding gun owners and national gun registration as a violation of the Second Amendment and an invasion of privacy of honest citizens."
STATUS OF GAYS	
"We support continued efforts... to end workplace discrimination against gay men and lesbians. We support the full inclusion of gay and lesbian families in the life of the nation. This would include an equitable alignment of benefits."	"We support the traditional definition of 'marriage' as the legal union of one man and one woman, and we believe that federal judges and bureaucrats should not force states to recognize other living arrangements as marriages."

Source: Copyright © 2000 by The New York Times, August 14, 2000, p. A18.

MYTHS IN POPULAR CULTURE

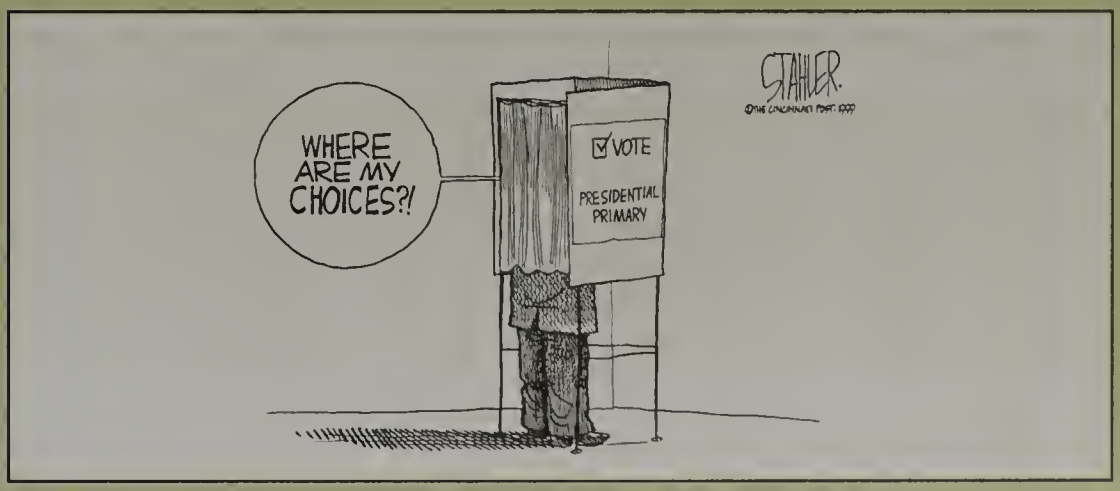
Cartoons and the Parties: "Stop Them Damned Pictures"

William Marcy "Boss" Tweed, the notorious boss of New York City's Tammany Hall Democratic machine during the 1860s and 1870s, detested political cartoons. Shortly after viewing a cartoon by Thomas Nast, highly critical of Tweed's sleaze in New York politics, Tweed was said to have ordered his lieutenants to "Stop them damned pictures. I don't care so much what the papers say about me. My constituents can't read. But, damn it, they can see pictures!" Nast's cartoons about Tweed were thought to have contributed to Tweed's eventual downfall. In the words of one scholar, they also "established once and forever . . . cartooning as an enduring presence in American [popular] political culture."

Indeed, many an early-rising, coffee-drinking, sleepy-eyed newspaper reader turns every morning to the editorial page, where political cartoons are often featured. One particular editorial cartoonist, Jeff Stahler, has frequently captured the mood of the nation through his artful and often satirical critiques of politicians and political parties. A good example is a cartoon he drew just prior to the 2000 primaries and elections that satirized the role of party primaries in the presidential race. Stahler's message is clear: Political party primaries provide us with no choices either within or between the Republican and Democratic parties. There is no choice . . . just an echo!

No doubt, many Americans share this opinion. And, of course, satire is a purposely exaggerated art, used to make a strong point. But as we point out in this chapter, not only is there diversity within each of the major political parties, but there are significant differences between the Democratic and Republican candidates on many issues and policies. For the most part, the parties do provide Americans with distinct policy and issue positions.

To be sure, we appreciate Stahler's humor and must even acknowledge the partial accuracy of his cartoon, for the various candidates for both the Republican and Democratic nominations in the



2000 election did indeed share similar positions in some policy areas. Yet the myth that the political parties do not offer us choices—a distortion that editorial cartoons often foster—also feeds and reinforces the stereotype of U.S. political parties that much of the public clings to.

Source: Roger A. Fisher. *Them Damned Pictures: Explorations in American Political Cartoon Art* (North Haven, Conn.: Archon Books, 1996), especially chaps. 1 and 6. The quotations are from pp. 2 and 3.

they are not binding on candidates or elected officials.[15] As political scientists Gerald Pomper and Susan Lederman argue,

> The parties do not copy each other's pledges, but make divergent appeals, thereby pointing to the differences in their basic composition. [The platform] is important because it summarizes, crystallizes, and presents to the voters the character of the party coalition. We should take platforms seriously because politicians seem to take them seriously.[16]

As you can see in Table 6.1, despite some similarities, the Republican and Democratic platforms differed significantly in 2000. While party platforms do serve as a form of propaganda—an attempt to put a positive light on the programs and goals of the party—they also represent a serious declaration of policy. The Democrats' positions were relatively liberal, with strong support for social spending, and the Republicans' positions were relatively conservative, with emphasis on individual enterprise.

Winning Elections. A party's ability to recruit the best possible candidates and to win elections determines its success. Party organizations do not monopolize that process because many candidates seek nomination on their own. In recent years, however, parties have offered their candidates a growing list of services. Party organizations, particularly at the state and national levels, offer candidates training and support, help them raise funds, and encourage voter turnout on election day. But many candidates in highly visible races also rely heavily on paid professional consultants to manage and finance their campaigns.

Primary An election in which party members select candidates to run for office under the party banner.

Today, the nomination of many candidates rests in the hands of those voters who take part in **primaries**—elections to select candidates to run for office under the party banner. (We discuss primaries in detail in Chapter 7, which covers elections.) Although primaries limit the direct role of the party-as-organization in the nomination process, partisanship prevails as the party-in-the-electorate makes its choices. It is important to note, however, that in parts of the country local party organizations are still instrumental in assisting candidates in their efforts to serve in government.[17] If you are interested in running for office in your home or college town, one way of making that a reality is to get involved with the local party you most closely identify with.

Organizing Government. Parties also organize the legislative and executive branches of government. Congress and most state legislatures are structured along party lines. Leadership and committee assignments in those bodies are usually by party, and executives—including mayors, governors, and the president—often work closely with party leaders to pass bills and implement programs.

Although members of Congress often vote along party lines, changes in the internal processes of Congress have in some ways made it difficult for party leaders to control members. Looking ahead to the next election, many members of Congress are more committed to their constituents than to their party. In addition, self-recruitment and the use of independent campaign consultants decrease reliance on the party as the source of nomination and campaign support. As a result, members of Congress do not necessarily put their party first and ignore their districts' or their own interests. (See Chapter 10, which covers Congress, for a detailed discussion.)

In short, party control over the vote of a member of Congress is far from absolute, in contrast to countries such as the United Kingdom of Great Britain and Northern Ireland, where the party's domination of the nominating process often guarantees the loyalty of its legislative members. Nevertheless, most members of Congress have a pronounced sense of party loyalty and share common values and policy positions with their party colleagues. The average Democrat or Republican often votes along party lines on issues on which the party has taken a strong partisan stand.[18]

Mitigating Conflict. Parties also serve to allay and control conflict among and between different groups and interests in our society. When different groups hold different opinions, the Democratic and Republican parties can provide a stage for compromise. It must be noted, however, that strong partisan differences between the Republicans and Democrats can also increase conflict. Such has been the case in recent years in Congress, where the Democrats and Republicans have engaged in very strong and often divisive battles over public policy issues ranging from foreign aid to social security funding.

American-Style Politics: The Two-Party System

As noted earlier, the Constitution makes no mention of parties, and in fact many of the founders viewed them as dangerous. Yet the debate and controversy that evolved as our nation struggled to deal with complex domestic and foreign issues slowly brought about the rise of divisions in the population and in the government—divisions that would lead to the advancement of political parties.

The founders' fear of parties slowly began to diminish, and by 1828, the nation had a two-party system. In the years that followed, parties evolved into a mechanism for expressing public opinion and organizing support among the citizenry. By 1908, New Jersey governor Woodrow Wilson, soon to become president, argued that parties are "absolutely necessary to . . . give some coherence to the action of political forces" and that they "have been our real body politic."[19]

The Winners: The Democrats and the Republicans

The modern Democratic party evolved as a result of the election of 1828 and strongly felt differences of opinion between Andrew Jackson and supporters of Jefferson. By the end of Jackson's presidency in 1837, which drew heavily on the support of farmers and other working people, the Democrats were truly a national party.

The Republican party was born in 1854 in opposition to slavery. It drew its support from businesspeople and merchants, abolitionists, and small farmers in the North and West. With the 1860 election of Abraham Lincoln, the Republicans established themselves as a major party, replacing the Whig party, which had been the other major party, in opposition to the Democrats, from the 1830s to the 1850s. Since then the Republicans and the Democrats have alternately dominated party politics.

CRITICAL THINKING

Is the two-party system in the United States alive and well and viable?

In recent years, scholars, reporters, and political pundits have raised questions about the future of the two-party system. Is the two-party system viable? Can a third party challenge the Democrats and Republicans for the presidency? Can the Republican and Democratic parties sustain majority status at the presidential level? We turn now to a discussion of these questions.

Realignment of Parties

Party realignment
A major shift by voters from one party to another that occurs when one party becomes dominant in the political system, controlling the presidency and Congress and many state legislatures as well.

Have we been experiencing, in recent years, a major realignment of political parties in the United States as Democrats and Republicans trade off control of the White House and Congress? For a **party realignment** to take place, one party must become dominant in the political system, controlling the presidency and Congress, and many state legislatures as well. Realignments occur (1) when a political, social, or economic development prompts those groups that have traditionally supported one party to shift their support to another party or (2) when large numbers of new voters enter the electorate, causing a shift to a new majority party.[20] The democratization of parties in the 1820s, the issue of slavery in the 1850s, and the Great Depression in the 1930s were three of the economic and social issues that precipitated major party realignments in the past. There have been four major American realignments altogether, marked by the election of Andrew Jackson in 1828, Abraham Lincoln in 1860, William McKinley in 1896, and Franklin D. Roosevelt in 1932.

National Party Conventions and Hoopla

National party conventions, while serious events confirming the selection of the party's candidate for the presidency of the United States, are also filled with celebration and hoopla. Here, delegates to the Democratic Convention dance to the music and wear funny hats as they celebrate the selection of their candidate.



Realigning elections seem to occur approximately every thirty years or every generation. The realignment that brought the Democrats to power in 1932 was, in part, the result of a shift in population away from rural small towns, where traditional Republican support rested, to the big cities, which the Democratic party had cultivated. A new coalition combining immigrants with Catholics, blacks, union members, various ethnic groups, and disaffected Republicans provided a lasting reservoir of support for the Democratic party. From this pattern, a realigning election, projecting the Republican party into the majority, should have occurred around 1968. Indeed, many observers thought that Nixon's victory that year marked the beginning of a new realignment.

Conditions favored a Republican resurgence in 1968. The Democratic party was bitterly divided over the Vietnam War, and riots marred its national convention. Some unusual events, however, may have worked against a shift of power to the Republicans. As the result of the civil rights movement of the 1960s, many southern African Americans joined the electorate, and their entry strengthened the Democrats' position. People were also living longer, which meant that New Deal Democrats remained in the electorate to support their party's candidates. Furthermore, the Watergate scandal eroded the Republicans' position in the 1970s and contributed to Georgia governor Jimmy Carter's election to the presidency in 1976. The Democrats continued to dominate both houses of Congress until 1981.

CRITICAL THINKING

Are we undergoing voter realignment—shifting in party preferences—in the United States?

Do recent electoral victories by Republican presidential and congressional candidates mean that a realignment has occurred? Three characteristics of our contemporary political scene warn us against any quick judgments regarding realignment. First, despite the Republicans' recent electoral successes, particularly in controlling Congress and a majority of the states' governorships, the Democrats were successful in holding the presidency through the 1990s. Even in the 2000 elections, there was no sign of party realignment. The presidential race was one of the closest in history, the Senate was tied, and only a handful of seats separated the two parties in the House. Second, realignments tend to occur over a period of years, and any permanent realignment will have to face the test of time. Third, some scholars have suggested that we may be going through a period of **party dealignment,** in which the public disassociates itself—that is, dealigns itself—from both parties and divides its votes among them and strong third-party or independent movements.[21] The relative increase in the number of independents and weak party identifiers during the past thirty years tends to support this argument. If this pattern prevails, neither party may be able to regain a solid hold on the title of "majority party" in the near future.

Party dealignment A period in which the public disassociates itself from both parties and splits its votes between the parties.

At present, therefore, no clear realignment has occurred. Although some scholars argue that we appear to be moving through a dealigning period, the concept of dealignment does not satisfactorily explain all citizen sentiment regarding parties and politics in the United States. Certainly no strong third-party challenge to the political system has taken hold as we begin the new century.

Why Two Parties?

One thing is clear: For most of its history, the United States has had a two-party system. We have many minor parties, but their members are rarely elected to a major office. Why has this been the case? Other democracies, including Israel, Holland, France, and Italy, have several important parties. What factors limit significant party activity in the United States to the Republicans and the Democrats?

Single-member district, winner-take-all electoral system The system of election used in the United States in all national and state elections and in most local elections. Officials are elected from districts that are served by only one legislator, and a candidate must win a plurality—the most votes.

Winner Takes All. According to one explanation, the rules that govern the electoral system in the United States are responsible for the two-party system.[22] Early in our history, we adopted what is known as a **single-member district, winner-take-all electoral system.** In all federal and state elections and in most local elections, we elect officials from districts served by only one legislator. In order to gain office, a candidate has to win a plurality—the most votes. (In certain states a candidate in a given election must win a majority of the votes, that is, more than 50 percent.) Thus, only one U.S. representative or state

legislator is elected from each congressional or legislative district, no matter how close the vote.

Proportional representation The electoral system used by many European nations in which legislative seats are assigned to party candidates in proportion to the percentage of the vote that the party receives in the district.

By contrast, most European nations use a system of **proportional representation.** In this system, each electoral district has a number of legislative seats, and these seats are assigned to party candidates in proportion to the percentage of the vote that the party receives within the district. If a party receives 35 percent of the vote in a district, it is allocated approximately 35 percent of that district's legislative seats. Thus minor or third parties may accumulate enough votes to gain representation in the legislature even if they are not able to attract a plurality or have only strong pockets of support.

The winner-take-all system in the United States has worked against the development of minor parties. Because it is so difficult for even the most successful minor parties to accumulate pluralities, their candidates rarely win. Recognizing that minority-party candidates have little chance, voters tend to be drawn to the major party coalitions at election time, and those parties try hard to maintain middle-of-the-road positions that will attract voters.[23] The result has been two broad-based party coalitions, such as the Republicans and the Democrats of today.

A Division of Interests. A second explanation, advanced by political scientists V. O. Key, Jr., and Louis Hartz, points to a natural division of interests in our nation as the source of the two-party system.[24] From the time of the country's founding until recently, divisions have existed between eastern manufacturers and western frontier interests, slaveholders and abolitionists, urban and rural interests, and various regional interests. These divisions have stemmed from tensions over the power of the national government and over questions of economic and social policy. That situation, according to Key and Hartz, has fostered the two-party competitive system, which is really a response to the national duality of interests.

A Similarity of Goals. Still another view focuses on the overriding consensus in the United States regarding our political, social, economic, and governmental systems. For example, most Americans believe in capitalism, virtually no Americans want to institute a monarchy, and most Americans regard religion as a private matter. By contrast, in many European countries, the people support a variety of radically different social and economic alternatives, ranging from socialism to anarchy, and differences in social class and religion have given rise to a broad range of parties.

Divisions do exist in the United States as well—for example, between the poor and the wealthy. But a basic acceptance of the political and governmental system by most Americans makes compromise possible. As a result, according to this view, the two major parties can adequately serve us all, and we do not need a complex multiparty system.

State Laws. As there is no mention of political parties in the U.S. Constitution, the definition of what a party is and the laws that regulate parties have been left, for the most part, to the individual states. Since the two major parties, the Republicans and the Democrats, have dominated the state legislatures, with the exception of Nebraska, state laws, in general, have historically made it difficult for third parties to get on the ballot. These restrictive state laws have helped perpetuate the two-party system in the United States (although recent court challenges have eliminated some of those restrictions in various states).

The Hidden Actors: Third Parties in the United States

CRITICAL THINKING

If we have a two-party system, are minor or third parties irrelevant in our political system?

Despite the strength of the two-party system, minor parties have always existed in the United States. There have been more than nine hundred of these "third" parties, and occasionally, they even do well in national elections, although only one of them—the Republicans in 1860—has developed into a permanent national party. The American "Know-Nothings" party received more than 21 percent of the popular vote in the 1856 presidential election, and the Bull Moose Progressives received more than 27 percent of the popular vote in the 1912 presidential election.[25] In 1992, independent candidate Ross Perot mounted a highly visible campaign for the presidency and received 19 percent of the popular vote in the election. In 1996, however, running as the Reform party presidential candidate, he received only about 8 percent of the vote. In 2000, Green party candidate Ralph Nader came in a distant third in the presidential election, carrying 3 percent of the vote.

Sometimes a minor party forms around a single issue, such as prohibition, or an ideology, such as socialism. Other minor parties are splinter groups that leave a major party because they feel that their interests are not well represented. An example is George Wallace's American Independent party, which split off from the Democrats in 1968.

Most of third parties' electoral successes come at the state and local level. But even at that level, they must overcome many barriers. Dominated by the two major parties, state legislatures have created complicated electoral rules, often requiring petitions, nominating conventions, minimum levels of registered voters, organizational requirements, or a combination of all of these provisions that often make it hard for the minor parties to place their candidates on the ballot.

Federal election laws also work against the minor parties. For example, major parties automatically receive guaranteed funding for presidential campaigns. A third party cannot obtain such funding until its candidate has demonstrated the ability to garner a certain amount (5 percent) of the popular vote.

Third Parties in a Two-Party System

Over the past two hundred years, many third-party candidates have run for national, state, and local office. Here, Jesse Ventura, a former professional wrestler who became a high-profile spokesman for the Reform party, is sworn in as governor of Minnesota.



Despite these obstacles, third parties persist, attracting devoted members and serving as a force for change in American politics. These parties put new issues on the political agenda—issues that the major parties may overlook in their search for the broad middle ground, where most voters are perceived to be. For example, social security, unemployment insurance, the five-day workweek, workers' compensation, national health insurance, and government aid to farmers were first introduced by the Socialist party in its 1932 party platform and only later recognized as important programs by both the Republicans and the Democrats.

Future elections will no doubt provide voters with a number of third-party candidates for the presidency, as well as for Congress and state and local offices. In 2000, over fifty minor parties ran candidates in Senate, House, and gubernatorial races and in the presidential race. (See Closer to Home box.)

Party Structure from the Bottom Up

Decentralization is the key word to remember when thinking about the structure of parties. Just as in our governmental system, power in the parties is fragmented among local, state, and national organizations. The two national parties are loose confederations of state parties, and state political parties are loose confederations of city and county political organizations.

Local Parties

Precinct The bottom of the typical local party structure—a voting district, generally covering an area of several blocks.

Wards City council districts that are, in the party organization, the level below the citywide level.

Patronage The provision of jobs in return for political support.

Preferments The provision of services or contracts in return for political support. Party committee members use patronage and preferments to court voters and obtain campaign contributions.

You may be most familiar with the structure of political parties at the local level. At the bottom of the typical local party structure is the **precinct,** a voting district generally covering an area of several blocks. An elected or appointed precinct captain may oversee electoral activities in the precinct, including voter registration, distribution of leaflets, and get-out-the-vote efforts. Above the precinct level, several different organizations exist. **Wards,** or city council districts, are important in big cities such as Chicago. Elsewhere, party organizations exist at the city, county, congressional district, state legislative, or even judicial level. Members of these committees may be elected or appointed. Their responsibilities include raising money, recruiting candidates, conducting campaigns, getting out the vote, and handling **patronage**—that is, jobs for party loyalists—and **preferments**—providing services or contracts to individuals and companies in return for campaign support.

In many places around the country, local parties scarcely exist at all. Nonpartisan elections are the rule, a result of antiparty reforms during the early 1900s, and politics is relatively informal. Indeed, two-thirds of cities with populations of more than five thousand use the nonpartisan form of election. In many of these communities, formal or informal "political clubs" raise money and run campaigns. These clubs actively compete with each other in elections and may identify with either major party.[26]

Even in communities where partisan elections are the rule, party organization and strength vary tremendously. If one party dominates, the weaker party may find it impossible to recruit workers and candidates and to raise money for elections. Until its recent resurgence, the Republican party had to cope with this kind of handicap throughout a Democrat-dominated South. In communities that show little interest in politics, neither party may be able to put together a strong local organization.

Nevertheless, it is at the grassroots local community level that party organization often finds its greatest strength, and it is at that level that we have seen growth in party organizations in recent years. Indeed, recent research suggests that local party organizations are becoming increasingly active in various aspects of the campaign process in communities.[27]

CLOSER TO HOME



"Dead on Arrival?": Third Parties in Our Towns and States

Most Americans view the election system as dominated by the two major parties, the Republicans and the Democrats (see pages 166–168 in this chapter for a discussion of two-party dominance). Every presidential election year, the two major parties face off in a contest that marks our nation as firmly committed to having only two serious contenders fight it out for the most powerful political office in the world. And while Americans in increasing numbers state that they have voted for third-party (or independent) candidates (37 percent in one recent poll), the fact remains that even a highly visible third-party candidate like Ralph Nader (Green party) was able to garner only 3 percent of the vote in the 2000 presidential election.

Are third parties dead? They may not be very successful in the national electoral arena, but they are alive and active at the local and state levels of government, supporting various issues, presenting policy agendas, and even running candidates for local and statewide offices. In the 2000 elections, over fifty minor parties fielded candidates in states from Alabama to Wyoming.

One of those third parties that has been particularly active at the state level is the Reform party. Emphasizing foreign trade reform, lower taxes, campaign finance reform, and smaller government, the Reform party successfully elected Jesse Ventura to the governorship of Minnesota in 1998. While Ventura (known during his professional wrestling days as "the Body") received only a plurality of the vote (37 percent), he defeated the two well-funded major-party candidates. Unfortunately for the Reform party, Governor Ventura, the party's most visible and successful statewide candidate, left the party in February 2000, stating that because of internal divisions and infighting, he regarded it as a "disfuntional" party.

Two students of state and local government, Ann O'M. Bowman and Richard C. Kearney, have investigated the success of third-party electoral effort at the local and state levels. The Green party, a strong proponent for a cleaner environment, "has elected forty-four of its members to local offices in eleven states, including city council positions in cities such as Flagstaff, Arizona; Santa Monica, California; and Chapel Hill, North Carolina." The Libertarian party, which extols an ideological belief that government should do no more than what is minimally necessary in the area of economic affairs and the personal freedoms of the people, has experienced electoral successes at the local level of government. The party has been victorious in local elections in California, New Hampshire, Pennsylvania, and thirty-four other states.

Indeed, as we get closer to home and local and state government, it is clear that third parties, such as the Reform, Libertarian, and Green parties, play a role in our government and, subsequently, in our lives. They turn out not to be "dead on arrival"!

Sources: Survey by the Media Studies Center/Roper Center, February 1996; Congress; *Congressional Quarterly Weekly Report*, 54, No.45 (November 9, 1996), 3250; Ann O'M. Bowman and Richard C. Kearney, *State and Local Government: The Essentials* (Boston: Houghton Mifflin Co., 2000), 94.

State Parties

The influence and power of state party organizations vary from state to state. State parties in Alabama, California, and Maryland, for example, have almost nothing to say about which candidates run for office or how they run their campaigns. In contrast, parties in states like Connecticut, Indiana, and Michigan wield considerable power.[28] Often a good deal of that power is in the hands of the state chairperson. It is not unusual for the governor of a state to control the state's party organization, although, as we shall see in Chapter 7, on elections and campaigns, governors are often motivated to establish their own candidate-centered organization devoted to their campaign for re-election. Party organization varies from state to state, however, and depends on the preferences of officeholders and other influential party members and on state laws and party rules and regulations.

In recent years, state party organizations have assumed an important role on the political scene.[29] State parties have increasingly begun to offer fundraising, polling, and research services to state and local candidates. They may also provide computer analyses of voting behavior. In addition, most state party organizations help orchestrate the state presidential campaigns.

National Parties

The national party organizations come into their own every four years when they organize the national conventions and support candidates for major office. Although they are less visible the rest of the time, the national party staffs, directed by the national chairpersons and the national committees, which include representatives from all the states, are hard at work. They raise money for national and state elections, run workshops on campaigning and fundraising techniques for congressional candidates, and maintain the loose, decentralized structure that is the national party. The Democrats and the Republicans, by devoting greater resources to the national party organizations, have undergone a national resurgence during the past fifteen years.

Political action committee (PAC) An independent organization that interest groups, officeholders, and political candidates can establish for the sole purpose of contributing money to the campaigns of candidates who sympathize with its aims. PACs are the result of federal laws that prohibit most interest groups from donating money to political campaigns.

The electoral role of the national party organizations has been challenged in recent years by interest groups and their **political action committees (PACs).** Because federal laws, as well as many state laws, prohibit various interest groups from donating money to political campaigns, such groups have set up affiliated PAC organizations for the purpose of contributing money to the campaigns of candidates who sympathize with their aims. (See Chapter 8, on interest groups, for a more detailed discussion of the role of PACs.) The involvement of professional consultants and the media in the campaign process has also challenged the role of the national organizations. (See Chapter 7, on elections, for more on this topic.)

Homegrown Support for Local and State Candidates

Local and state elections often inspire strong feelings and vocal citizen support, as evidenced by homeowners posting signs on their lawns for their favored candidates. The signs often appeal to voters' partisanship, identifying the candidate as a Democrat, Republican, or third-party candidate.



Despite these challenges, the national organizations have refused to accept a secondary role in national politics and during the past twenty-five years have worked to revitalize themselves.[30] Both the Republican and Democratic parties have strengthened their fundraising and candidate support systems. They now provide sophisticated technical campaign expertise to state and local parties in addition to campaign financial support. In addition, the Democrats have redefined the rules governing the selection of presidential convention delegates to make the party's decision-making structure more democratic and to increase grassroots participation in the party.

Conclusion: Decline or Transformation of Political Parties?

What is the future of the Democratic and Republican parties? Some scholars insist that both parties are in a period of decline and see them as weak, inconsistent in their policies, lacking accountability for their actions, disorganized in pursuing their goals, and less effective than in the past in organizing government.[31] In recent presidential campaigns, we have seen both the Democratic and the Republican parties faced with contentious battles over which factions of the party—moderate, liberal, or conservative—will control the nomination of candidates and the writing of the party platform. We seem to be moving from

Party-centered campaign A campaign in which the party coordinates activities, raises money, and develops strategies.

Candidate-centered campaign A campaign in which paid consultants or volunteers coordinate campaign activities, develop strategies, and raise funds. Parties play a secondary role.

party-centered campaigns to **candidate-centered campaigns,** reflecting the shift in control over the candidate recruitment and campaign process from the political parties to candidate-controlled campaign organizations. Given the decrease in party identification and the weakening of party control over some aspects of the campaign and election process, it is not surprising that many people believe in the myth of party irrelevance.

Are the parties identical? It often seems that way because some of their policies can be difficult to distinguish. On certain broad issues, such as supporting reductions in the national deficit, and narrow issues, such as social security for the elderly, their positions are often the same. To confuse matters further, groups of legislators from both parties occasionally join forces to support or oppose legislation.

Nevertheless, the evidence suggests that the parties are not irrelevant. The fact that they attract different coalitions of voters and office seekers and that Democrats and Republicans in the electorate and in government tend to view many issues differently attests to their relevancy in the political system.

The significant number of independents, along with the increase in ticket splitting, suggests that parties may be less relevant than in the past, as does the takeover of some traditional party roles by interest groups, political action committees, the media, and professional political consultants. These issues will be discussed further in Chapters 7, 8, and 9. The parties, however, have changed in response to such challenges. Furthermore, although parties attract fewer strong supporters, particularly among college students, a significant majority of voters still feel some attachment to either the Democrats or the Republicans and believe that one party can do a better job than the other in tackling the nation's most serious problems.[32]

If parties are still viable, what kind of change is taking place? How can we explain, for example, the growing independence of political candidates and legislators from their parties? Some scholars have suggested that a transformation is taking place in the roles and functions of parties in our society.[33]

Although parties are now sharing many traditional functions with other groups, they have also taken on new tasks, as our discussion in this chapter has shown. Both national and state organizations have enhanced their roles in the campaign process and continue to play an important role at the local level. In fact, most of the elections held in our nation during the four years between presidential races—and they number more than five hundred thousand—are not touched by any other organized group. Party influence in the Senate and House remains strong, and on many partisan issues the members vote along party lines more often than not. This pattern is also typical of state legislators.

Thus, despite the myth of party irrelevance, parties remain a key institution in American politics and are still one of the most important cues for voters making electoral decisions. They also play a dominant role in organizing and coordinating public policy on literally thousands of issues. Finally, parties represent many individuals and groups that are not adequately served by other

organizations. These groups include the poor and minorities. All of them have benefited from strong party platforms and legislative action. Challenged by the entry of new and competing institutions into the electoral process, parties have increasingly adapted to these challenges and have maintained their unique role in our political system.

Summary

1. American political parties are coalitions of people organized formally to recruit, nominate, and elect candidates for public office and to use elected office to achieve shared political goals.
2. Parties represent three different alliances of members: the party-as-organization, the party-in-the-electorate, and the party-in-government.
3. Although many Americans' identification with the Republican or Democratic party seems to be weak, the parties remain relevant symbols, particularly when it comes to voting.
4. Parties organize citizens into electoral coalitions, develop policy positions, work to win elections, and organize government.
5. Parties developed slowly in the United States, but by the 1860s the Republicans and the Democrats had laid the foundation for the two-party system. There have been four major party realignments, or major shifts in party coalitions, in U.S. history. Currently, scholars are debating whether we are in a period of realignment or dealignment.
6. Explanations for the existence of the two-party system include winner-take-all electoral rules, a division of social and economic interests, a basic consensus on political goals, and restrictive state laws regarding third parties.
7. Despite the strength of the major parties, minor parties thrive and present program alternatives that are often adopted by the Democratic and Republican parties.
8. Both local and state political parties have grown in importance in recent years. Although the national party organizations have been challenged by competing groups, they have responded to the challenge and in changing have revitalized themselves.



Net Work

Political parties, while not mentioned in the Constitution, are one of the most important institutional arrangements in our political and governmental system. To find out more about the two major parties in the United States, visit the Democratic National Committee home page (**http://www.democrats.org**) and the Republican National Committee site (**http://www.rnc.org**). What issues do the Democrats seem to focus on? The Republicans? How do the parties differ in their opinions on the issues that both address?

Both parties have party organizations affiliated with each of the houses of Congress: the Democratic Congressional Campaign Committee (House of Representatives), at **http://www.dccc.org;** the Democratic Senatorial Campaign Committee, at **http://www.dscc.org;** the National Republican Congressional Committee (House of Representatives), at **http://www.nrcc.org;** and the National Republican Senatorial Committee, at **http://www.nrsc.org.**

Not surprisingly, a number of minor or third parties maintain web sites. They include the Libertarian Party **(http://www.lp.org/lp.html),** the Reform Party **(http://www.reformparty.org),** the Green Parties of North America **(http://www.greens.org),** the Democratic Socialists of America **(http://www.dsausa.org),** and the United States Taxpayers Party **(http://www.ustaxpayers.org).**

Third parties offer different policy positions that are often opposed to those of the two major parties. As an exercise, select three of the third parties listed above and compare their positions on one or more issue to those of the Democrats and the Republicans.

CHAPTER 7

Campaigns and Elections

- Nominations: The Selection Process

Why Do People Run?: Careers, service, and policy goals
The Caucus: Old-Fashioned Politics: Definition and characteristics
Primaries: New Kid on the Block: Definition and characteristics
The Changing Role of Nominating Conventions: Ratifying the primary results
Who Gets Nominated? Characteristics of candidates

- The Race for Office

Financing Campaigns: The Buying and Selling of Office?: Abuses and their legal remedies; sources of funds; money and victory; campaign finance reform
Organizing Campaigns: The Old and the New: Strategy, technology, and style

- The Media and Campaigns: Are We Brainwashed?
- Campaigns and Political Parties
- Voting and Elections

Who Is Allowed to Vote? Constitutional and legal rules
Who Votes? Demographics and the disappointed voter
Why Do People Vote the Way They Do?: Issues, image, party identification, retrospective voting, and group support

- The Electoral College
- Promises, Promises: The Link Between Campaigns and Public Policy
- Conclusion: Do Elections Matter?

MYTH & REALITY

Do politicians always break their campaign promises?

MYTH & REALITY

The election campaign was exhilarating. Millions of people turned out to see and hear the presidential candidates as they traveled around the nation speaking on the issues of the day. Between July and November, the Democratic candidate "made five hundred speeches . . . addressing thirty to forty million people . . . traveling 18,000 miles in four swings around the country."[1] One scholar wrote of the Republican candidate that his was a classic case of a "modern advertising campaign." Cartoons, posters, and inscriptions were turned out by the carload, more than "120 million campaign documents" were distributed to the people, and "an army of 1,400 trained speakers" was engaged to speak in favor of the candidate.[2] The Republicans canvassed voters and targeted specific ethnic groups with campaign literature written in German, Spanish, French, Italian, and Yiddish, as well as other languages.[3]

That campaign story may seem familiar. The campaign strategies and hoopla may remind you of recent races you have witnessed or seen on television.

Hoopla and Campaigns

Every campaign has included advertising posters, cartoons, and campaign literature. When William McKinley ran for president in 1896, his campaign literature emphasized his link to prosperity, prestige, and economic well-being.



Yet the campaign took place more than one hundred years ago, in 1896, when William Jennings Bryan was the Democratic presidential candidate, running against Republican William McKinley.

Rallies, use of the media, and appeals to special interests remain a basic part of modern-day campaigns and elections, and the intensity and excitement have stayed the same. The electoral system itself is quite different, however. An array of regulations, restrictions, and constitutional amendments has changed the way candidates are nominated, how campaigns are run, and who is eligible to vote. Unlike McKinley or Bryan, today's candidates for president have to contend with presidential primaries, campaign spending limits, and an expanded voting population. In 1896, most voters were middle- and upper-class white men. Today, candidates must appeal to men and women, minorities and whites, rich and poor, and young and old. Furthermore, in recent years candidates for every office from city council member to president have had to deal with new technologies, including the World Wide Web and the Internet.

Despite the excitement of the campaigns and the widespread media coverage, the American public has some misgivings about the election process. Voter turnout has declined in the United States since the early 1960s, with only 51 percent of the eligible electorate voting in the 2000 presidential race. In 1960, the Kennedy-Nixon race attracted 63 percent of the vote.

CRITICAL THINKING

Do politicians always break their campaign promises?

Poll findings also suggest that Americans do not believe that their elected representatives respond to their demands and expectations. For example, two-thirds of Americans feel "distant and disconnected from government." Only 19 percent have confidence in Congress, and only 29 percent trust the government in Washington to do the right thing.[4]

The public also strongly disapproves of the way candidates run their campaigns, particularly the way they finance them. Such views are reinforced when, for example, the public learns that congressional candidates in 2000 spent more than $1 billion on primary and general election campaigns. Expenditures on individual races also attract a great deal of attention. In 2000, Jon Corzine, running successfully in the New Jersey Democratic primary for the U.S. Senate, spent over $33 million for the nomination. "The cost of the race . . . smashed the previous U.S. record for an entire Senate race—the $30 million spent by Republican Michael Huffington during his losing 1994 bid for office in California."[5]

Why have so many Americans come to doubt the usefulness of elections? Why do so many citizens stay home on election day? One myth seems to be at the root of public criticism of the electoral process. The *myth of broken promises* holds that elections do not affect government policies—that candidates, once elected, fail to keep the promises they made during their campaigns.

The reality of the election process, however, differs from that myth. We demonstrate in this chapter that politicians seek to achieve not only their own career goals but also the social and political goals put forth in their campaigns. In addition, we show that although money is very important in campaigns because it buys television time, polls, consultants, and the like, a variety of other factors also have a significant impact on who is elected.

Nominations: The Selection Process

Every year thousands of individuals decide to run for political office. In many cases, before they can get on the ballot, they must be selected, or nominated, by a political party, often after a costly, time-consuming, and exhausting primary campaign. What motivates these individuals?

Why Do People Run?

"The stakes are too high for government to be a spectator sport," former member of Congress Barbara Jordan from Texas told a commencement audience. Few who run for office would disagree. Public service, personal ambition, and policy goals motivate people to enter the proverbial election ring.[6] These factors often drive politicians to climb what Joseph Schlesinger refers to as the **opportunity structure:** the political ladder of local, state, and national offices that can bring one greater prestige and power as one moves toward the presidency at the very top.[7]

Opportunity structure The political ladder of local, state, and national offices that bring greater prestige and power as one moves toward the presidency.

The Caucus: Old-Fashioned Politics

Ambition and commitment alone are not enough to ensure election, however. Anyone who wants to run for political office in most partisan elections, including the presidency, must first secure a party nomination. One of the oldest methods of nomination is the **caucus** (the word means "meeting"). A diary entry written by John Adams in 1763 gives a less-than-flattering description of the process:

> This day learned that the caucus club meets at certain times in the garret of Dawes. . . . There they smoke tobacco till you cannot see from one end of the garret to the other. There they drink flip* . . . and they choose a moderator who puts questions to the vote regularly; and selectmen, assessors, collectors, fire wardens, and representatives are regularly chosen before they are chosen in the town.[8]

Caucus A forum for choosing candidates that was closed to the public until the Progressive Era; contemporary caucuses are local party meetings that are open to all who live in the precinct in which citizens discuss and then vote for delegates to district and state conventions.

Until the Progressive Era, a period of political reform starting around the end of the nineteenth century, most party nominations were decided by caucuses or conventions. These meetings were closed to the public, and party leaders usually chose the nominees. Contemporary caucuses are local meetings that are open to all who live in the precinct. These citizens "caucus"—that is, meet and discuss—and then vote for delegates to district and state conventions. These delegates then nominate candidates for congressional and statewide offices. In about 20 percent of the states, delegates to the national presidential conventions are chosen by the caucus-convention method. Many of these delegates are committed in advance to a particular presidential candidate. Some, however, choose to run as uncommitted delegates, awaiting the national convention to declare their candidate preference.

*For the curious and those with a cast-iron stomach, flip is a hot mixture of beer, cider, sugar, egg, and nutmeg—an excellent eye opener.

The most celebrated of modern presidential caucuses takes place every four years in Iowa, where candidates compete for the Democratic and Republican presidential nominations. Traditionally the Iowa caucus is the first of the presidential campaign cycle, and candidates are anxious to do well in order to demonstrate their appeal both to the voters and to individuals who are potential campaign contributors and who want to support a winner.

Primaries: New Kid on the Block

Primary An election in which party members select candidates to run for office under the party banner.

Open primary A primary election in which any qualified voter may participate, regardless of party affiliation. The voter chooses one party ballot at the polling place.

Closed primary A primary election that allows a voter to obtain only a ballot of the party in which he or she is registered.

Partisan primary A primary in which candidates run for their own party's nomination.

Nonpartisan primary A primary in which candidates are listed on a ballot with no party identification.

Run-off primary An electoral contest between the top two primary vote getters that determines the party's candidate in a general election. Such primaries are held in the ten southern states, where a majority of the vote is needed to win the primary.

Except in presidential contests, caucuses are relatively uncommon in contemporary politics. As we pointed out in Chapter 6, most Democratic and Republican nominees, whether at the national, state, or local level, are chosen in a **primary:** an election in which party members, for the most part (in some states, nonparty members may participate), select candidates to run for office under the party banner. The first recorded primary was held in Crawford County, Pennsylvania, in 1842, but the first statewide primary system was not enacted until 1903, in Wisconsin. In about 80 percent of the states, delegates to the Democratic and Republican national conventions are chosen by primary.*

In an **open primary,** any qualified registered voter may participate, regardless of party affiliation. On entering the polling place, voters select a Democratic, Republican, or other party ballot and choose among the names on the ballot to select that party's candidates for the various offices. A variation on the open primary is the blanket primary, where voters do not disclose their party affiliation at the polling place and where they may participate in the Democratic primary for one office and the Republican primary for another office.[9] However, in a decision delivered on June 26, 2000, the U.S. Supreme Court declared the blanket primary unconstitutional, arguing that it violated a political party's First Amendment right of association.[10] The **closed primary,** used in a majority of the states and in Washington, D.C., allows voters to obtain only a ballot of the party in which they are registered.[11]

In a **partisan primary,** candidates run for their own party's nomination. In a **nonpartisan primary,** candidates are listed on a ballot with no party identification. All presidential primaries are partisan, but many local primaries and the Nebraska state primary are nonpartisan.

In most states, the winning candidate is the one who receives the most votes. In ten southern states, a majority (more than 50 percent) of the vote is needed to win; if no candidate receives a clear majority, a **run-off primary** between the top two vote getters determines the party's candidate in the general election.

In presidential contests, the first presidential primary is always held in New Hampshire. Although the state is small and its population is not representative

*The reason it is difficult to say exactly how many states use a primary system is that in Delaware, Idaho, Virginia, and Washington, the Democatic party uses a caucus/convention system to select delegates to the national convention, whereas the Republican party uses a primary. In Texas, the Democratic party selects its delegates using a combination primary/caucus system, whereas the Republican party employs a primary system. It is also relevant to point out that in any given state, the Democrats and the Republicans may hold their primaries or caucuses on different days.



CRITICAL THINKING

Does a front-loaded, abbreviated primary system give some candidates an advantage in seeking the Republican or Democratic presidential nomination?

of the nation's population as a whole, this primary plays a significant symbolic role in the nomination process, as New Hampshire citizens are given the first opportunity to express their preferences for Republican and Democratic presidential hopefuls. Like victory in the first caucus, held in Iowa, victory in the New Hampshire primary brings the candidate a great deal of media coverage, which helps in attracting campaign donations. From New Hampshire's point of view, having the first primary draws the candidates, their entourage, and the media into the state. This means not only prestige and honor, but additional revenue, too. It is no wonder that New Hampshire jealously guards the honor of initiating the primary season.

Historically, presidential primaries were spread out over the first six months of the calender year in which the presidential election took place, beginning with the New Hampshire primary in February and culminating with several state primaries in June. In 2000, however, many states, eager to have an early influence on the Republican and Democratic nomination process, moved their primaries ahead. As a result of this **front-loading** phenomenon, by the end of March 2000, approximately 70 percent of the delegates to both the Democratic and the Republican conventions had been selected. Why is front-loading important? It tends to give candidates who are the front-runners at the beginning of the primary season an advantage: With a shorter primary season, underdogs have only a brief window of opportunity to overtake the front-runner. In the past, with primaries spread out over a six-month period, a candidate who was not initially favored could still theoretically build momentum through the later primaries.

Front-loading The scheduling of primaries very early in the campaign season by states eager to have an early influence on the Republican and Democratic nomination process, as occurred in 2000.

Now, candidates must demonstrate that they have public support very early in the primaries if they are going to have any chance of getting their party's nomination. In addition, with the primaries clustered so close together, campaign money must be raised early and in large amounts if a candidate is to compete successfully. In 2000 alone, fourteen Democratic and Republican presidential aspirants spent more than $245 million on their nomination campaigns.[12] Money raised after the March primaries is unlikely to have any significant impact on the nomination race. Clearly, the front-loading of primaries has had a significant impact on strategies for winning the Democratic or Republican presidential nomination.

Both the Democratic and Republican parties are considering alternative proposals in spacing primaries to avoid front-loading in the 2004 presidential elections.

The Changing Role of Nominating Conventions

When Hubert Humphrey was nominated by the Democratic party in 1968, he had entered no primaries, counting instead on support from President Lyndon B. Johnson and other party leaders. His defeat in the November election ended a century-old tradition in which the presidential and vice-presidential candidates were in effect chosen at their party's national convention by delegates from the fifty states, the District of Columbia, and (in the case of the Democrats) offshore territories and Democrats abroad.

The rise of the presidential primary has meant that the national party conventions no longer select the candidates, but rather ratify the presidential choices already made in statewide primaries and caucuses.[13] Conventions still serve a number of traditional functions, however. They give the party faithful a place to transact business, which includes changing rules and writing the party platform. When the conventions are run smoothly, with minimal disputes and conflicts, they serve as an important "media event," publicizing the party's candidates and issues to a nationwide audience.

Until the rule reforms of the late 1960s and early 1970s, state and local party leaders appointed most convention delegates. The delegates were largely well-educated, white, male professionals. One survey in the 1940s showed that nearly 40 percent of them were lawyers.[14] In 2000, a majority of delegates to the Democratic and Republican conventions were elected through primaries. Delegates still tend to come from elite groups, however: They tend to be well educated and predominantly white, with relatively high family incomes. Democrats attract more African Americans, young people, union members, and women to their conventions, whereas Republican delegates tend to be older, white, and predominantly Protestant. Loyal supporters of one of the major candidates, most delegates stand for election in a primary or caucus in that candidate's name.

CRITICAL THINKING

Do voters take the nomination process seriously and participate in party primaries and caucuses?

Although for both parties the nomination process is critical to the success of any presidential aspirant, apparently it matters less to most voters. In most

primaries, fewer than 30 percent of the eligible voters turn out to vote; often the percentage is under 20 percent.

Who Gets Nominated?

In the past, almost all the Democratic and Republican presidential nominees were white, male, wealthy Protestants. The barrier against Catholics fell with the Democratic nomination of Al Smith in 1928, but Protestant candidates still remain the rule. Furthermore, with the exception of General Dwight D. Eisenhower, a World War II hero who was elected in 1952, all successful presidential candidates for the last hundred years have held some high elective office—the vice-presidency, a seat in the U.S. Senate, or the governorship of a state. These elected positions give candidates the visibility and prestige necessary to attract campaign financing and to mount a national campaign.

Social barriers to the nomination of women and of African Americans, Jews, and other ethnic candidates seem to be weakening. In 1984, Congresswoman Geraldine Ferraro was the Democratic vice presidential nominee. In 2000, the Democratic party nominated the first Jewish vice presidential candidate on a major party ticket, Senator Joseph I. Lieberman. It is at least possible that in the not-so-distant future a woman, African American, or member of a minority religious denomination will successfully compete for a major party nomination for the presidency.



Growing Numbers of Women in Politics

Women constitute 40.8 percent of the Washington State Legislature, the highest percentage of women in any state legislature in the nation's history. Most of those 60 women are shown on the floor of the State Senate.

The Race for Office

Campaign watching is a favorite pastime for many Americans. A controversial candidate, a close race, or any presidential campaign brings headlines, television interviews and debates, and other media coverage. The public may be skeptical about the value of elections and the way they are financed, but it still enjoys the excitement of campaigns.

Financing Campaigns: The Buying or Selling of Office?

Much of the public regards the way many, if not most, campaigns are financed as suspect. The feeling prevails that campaigns consume far too much money. This perception is not just a contemporary impression. In 1895, Senator Mark A. Hanna, a Republican from Ohio who was regarded as one of the most powerful party leaders in the nation, said, "There are two things that are important in politics. The first is money, and I can't remember what the second one is."[15] While reality tells us that Hanna's observation is an exaggeration, campaign financing, particularly in federal elections, remains a major issue of concern among the American public.

Candidates can face offers of large campaign contributions in return for favors. No doubt, some candidates accept such offers; others do not. One would-be contributor to Edmund Muskie's 1972 presidential campaign offered $200,000 with the following stipulation: "You understand, . . . I want to be an American ambassador. Not a big country, you understand, not France or England. I couldn't afford those anyway. But can you give me a little one, Switzerland or Belgium?"[16] Muskie summarily dismissed the offer.

Of course, financing campaigns is an expensive proposition, especially given the cost of television and the high fees charged by pollsters and various campaign strategists. Between 1964 and 1996, campaign costs in all elections in the United States rose from around $200 million to over $4 billion. In 2000, candidates for the House of Representatives and the Senate collectively spent more than $1 billion. As is evident from viewing Table 7.1, presidential hopefuls spent a great deal of money in the 2000 presidential election.

The Federal Election Campaign Act. In 1971, and again in 1974 and later, Congress stepped in to limit the amount of money presidential candidates could receive and spend. The problem Congress was trying to solve was not the overall size of campaign expenditures, but rather the imbalances created when some individuals and groups could afford to contribute far more than others. The new law ensured that a single individual would no longer be able to do the kind of thing that W. Clement Stone did in 1972: The Chicago businessman directly contributed $2.1 million to Richard Nixon's presidential campaign.

TABLE 7.1

Candidate Spending in 2000 Presidential Election

	(millions of dollars)		
	Primary	General Election	Total
Democrat			
Al Gore	49.5	67.6	117.1
Bill Bradley	50.1		
Republican			
George W. Bush	100.8	67.6	168.4
John McCain	58.2		
Steve Forbes	49.2		
Alan Keyes	12.8		
Gary Bauer	10.5		
Orrin Hatch	2.6		

Source: Federal Election Commission.

The Federal Election Campaign Act of 1971, as amended in 1974 and later, created a system to monitor the flow of funds and set limits on contributions made by individuals. It also provided for public financing of campaigns and restricted total spending by those candidates who accept federal funding. The spending limits, however, apply only to presidential campaign finances. Congress has never restricted its own election expenditures.

The act, along with its amendments, has four key features:

- It set up the Federal Election Commission, a bipartisan, six-member commission, to administer and enforce federal regulations regarding the contribution and expenditure of campaign funds. The limits on contributions apply to congressional as well as presidential candidates.
- It limits individual contributions to $1,000 per candidate per election (primary, runoff, and general elections are regarded as separate elections), $5,000 per year to any one political action committee (PAC), and $20,000 per year to a national party committee. The total amount of contributions per year by an individual must not exceed $25,000. PACs can contribute up to $5,000 per candidate per election. There is no ceiling on the total contributions a PAC can make. In 1976 the Supreme Court ruled in *Buckley* v. *Valeo* that, under the First Amendment right of freedom of speech, no limitation could be placed on contributions to the campaign by candidates or their families.

- It provides for public funding of the major parties' presidential election costs, including the Democratic and Republican national conventions.
- It places important controls on the amount of money that can be spent in presidential primaries and general elections. In primaries, presidential hopefuls who receive federal funding are required to conform with a number of federal regulations, including a ceiling on the amount of money they may spend in each state as well as for the entire pre-convention campaign (an amount lower than the sum of the cumulative total state limits). Candidates must record all donations of $50 or more. In return, the federal government matches individual contributions of up to $250 each, with a ceiling in expenditures by a candidate in 2000 of $40.536 million. In 2000, the Democratic and Republican candidates for the presidency each received $67.56 million in federal funding for the general election. By accepting this funding, the candidates agreed not to spend any additional funds on the campaign, although, as we shall shortly see, other organizations and individuals can spend money supporting or opposing a presidential candidate.

Congress did not intend to reduce the importance of money in the election process, however. In 2000, candidates for the House of Representatives and the Senate collectively spent more than $1 billion. By election day, parties, PACs, and candidates for federal office had managed to raise approximately $2 billion, not including a variety of other groups' independent expenditures. Expenses covered by campaign funds included the rental and furnishing of campaign headquarters, communication and transportation, polls, television and newspaper advertisements, political consultants, and of course accountants to keep track of how the money was collected and spent. In a competitive Senate race, one political observer has estimated that between 70 and 80 percent of campaign expenditures go for television advertisements. However, Herbert Alexander, a student of campaign financing, has pointed out that only about half of the candidates for the House of Representatives use television in their campaigns.[17]

While the campaign expenditure figures that we have discussed are, indeed, quite substantial, keep in mind that the advertising budgets for Procter & Gamble, General Motors, and Philip Morris each exceed $2 billion a year. Advertising revenues for just the television networks for the 1999–2000 season exceeded $15 billion. Furthermore, no matter how much a candidate spends, he or she may still lose. For example, in 1994, California Republican challenger Michael Huffington spent more than $30 million on a race for the Senate but still was defeated by the Democratic incumbent, Senator Diane Feinstein, who spent about $12 million.[18]

Sources of Campaign Funding. Where does the money come from? Some wealthy candidates finance their own campaigns or lend themselves the needed funds. This can give them an advantage over their opponents because there are

no limits on that kind of contribution. Most candidates, however, must solicit gifts and loans from interested individuals, their party, or other groups, including PACs.

One major consequence of the Federal Election Campaign Act has been the rise of the PACs. They were set up to bypass a provision of the act that prohibits unions, corporations, and other groups from contributing directly to candidates for national office. (This is nothing new; loopholes made a 1907 law prohibiting corporations from contributing to national elections and the Smith-Connally Act of 1944 placing similar prohibitions on labor unions essentially unenforceable.) PACs distribute voluntary contributions from such groups to candidates. During the 2000 election cycle, PACs contributed more than $243 million to congressional candidates.

PACs (and individuals) can legally spend any amount of money on a candidate as long as they do not coordinate their spending efforts or otherwise cooperate with the candidate's campaign. Thus, their participation can circumvent the spending and contribution limits of the campaign act. As important as PACs have become, however, they are still overshadowed by individual contributors, who supply the bulk of election funds.[19]

Does Money Buy Victory? Since 1976, the federal government has funded presidential campaigns, giving the Democratic and Republican candidates equal support. As a result, the major party candidates have entered the race for president, at least initially, on a more or less equal financial footing. In 2000, each of the major party candidates was provided with $67.56 million in federal funding for his campaign. This has reduced the amount of money spent in presidential campaigns but has not entirely controlled it because, as we have seen, unlimited spending by private individuals and groups is still permitted as long as those efforts are not coordinated with the candidate's campaign. In addition, individuals, corporations, and unions may make unlimited contributions to the national parties; this **soft money** can be spent on party-building activities like voter registration drives or get-out-the-vote endeavors. These efforts at helping the overall party ticket can have an impact on presidential races and are therefore viewed as a major loophole in the Federal Election Campaign Act, because get-out-the-vote activities can be, and often have been, clearly directed toward partisan endeavors. Parties can also legally use this money to pay for overhead expenses, contributions to state and local candidates, and multimillion-dollar television ad campaigns as long as the ads are just on the issues and do not explicitly call for "voting for" or "voting against" a particular presidential or congressional candidate.[20] As you can easily imagine, there is a fine line in advertisements between issue advocacy and supporting a specific candidate—a line that appears to often be crossed. In effect, this loophole allows many wealthy individuals to avoid federal limitations on campaign contributions. While such a tactic is legal, it adds to the public's justifiable skepticism of laws that supposedly limit the influence money has on campaigns and eliminate "fat cat" contributors. In 2000, it was estimated that the Republican party raised and

Soft money
Unrestricted contributions to political parties by individuals, corporations, and unions that can be spent on party-building activities like voter registration drives and get-out-the-vote efforts. The problem is that loopholes in the law allow soft money to also be spent in support of party candidates as long as key words like "elect," "vote for," or "vote against" do not appear in the ads.

spent over $211 million and the Democratic party raised and spent over $199 million in soft-money contributions.

Money also plays a large part in congressional campaigns, which are not funded by the federal government. In 2000, for example, campaign spending for all congressional races was approximately $1 billion. For many candidates, specifically challengers of incumbents, money is a passport to visibility—or at least to the television exposure needed to mount an effective challenge.

Money is unquestionably a very important factor in many campaigns, and it affects more than just the election outcome. First, both incumbents and challengers must spend a considerable amount of time raising funds for a congressional election, time that takes them away from campaigning and, for incumbents, from governing and policymaking. An average competitive Senate race will cost in excess of $5 million, requiring a senator running for re-election to raise a minimum of $20,000 every week of her or his six-year term. Second, the need to raise large sums of money to campaign for Congress (as well as many other offices) prevents many citizens from even contemplating a run for political office. Third, the large sums of money spent on campaigns often gives the public the impression that contributors can buy the favor of elected officials.

However, it is important to recognize that money is not the only factor determining the outcome of congressional elections. Who wins also depends on the circumstances of the race, particularly whether one of the candidates is an **incumbent**—that is, in office at the time of the election. Incumbents are hard to beat because they are usually well known to voters and because they have already served the state or district. The retention rate of incumbent members of the House of Representatives running for re-election in 2000 was over 95 percent.

Incumbent A candidate who holds the contested office at the time of the election.

Furthermore, incumbents often find it relatively easy to raise funds. Indeed, incumbents get the lion's share of campaign contributions. Still, a strong, competitive challenger may have a chance against an incumbent,[21] although the race may be lost before it begins unless the challenger can raise enough money to create name recognition. Spending has the greatest impact on an election—known as an **open race**—in which no incumbent is in the race and the outcome is uncertain.

Open race An election in which there is no incumbent in the race.

Thus the reality is that money is a necessary, but not a sufficient, factor in a successful bid for many political offices. As Gary C. Jacobson has pointed out,

> Money is not sufficient because many factors quite apart from campaigns . . . affect election outcomes: partisanship, national tides, presidential coattails, issues, candidates' personalities and skills, scandals, incumbency, and many others. Money is necessary because campaigns do have an impact on election results, and campaigns cannot be run without it.[22]

Campaign Finance Reform. Although money may not be the only important factor in a successful campaign, many people believe that even the appearance of improprieties on the part of candidates in raising campaign funds is reason enough for reforming the system. The millions of dollars contributed to political parties in soft money by individuals, corporations, and unions have also made

CLOSER TO HOME



Campaign Financing: The Money Game Closer to Home

When most people think about money and elections, they tend to focus on the national level, where hundreds of millions of dollars are raised and spent every election cycle on congressional and presidential races. But what about closer-to-home elections—the state and local ones? Are they costly events?

The answer to this last question is an unqualified yes. In California alone, over $300 million was spent during the 1998 election cycle, a record sum that was surpassed during the 2000 election cycle. By any standard, this was a lot of money. Campaigns for the office of governor run into the millions of dollars, and increasingly we are finding that state legislative races can cost anywhere from $250,000 to over a million dollars in competitive districts. Whereas many mayoral and town or city council campaigns involve relatively small campaign budgets, large-city mayoral campaigns such as those in New York, Chicago, Los Angeles, Dallas, Philadelphia, Boston, and Atlanta consume millions of dollars.

Efforts to regulate and control campaign fundraising and spending at the state and local level have varied from state to state. All of the fifty states provide for campaign finance reporting procedures, although California, Connecticut, Florida, and New Jersey lead the way by providing for the most vigorous enforcement regulations. Some states have established limits on contributions to state campaigns (New York and Florida), while others place no contribution limitations on any group or individual (Illinois, Missouri, and Utah). Michigan is one of the few states that use state taxes to fund the governor's race.

In Iowa, the Republican and Democratic parties were particularly effective and innovative in 2000 in raising campaign funds for state legislative races. Since the state was holding the first-in-the-nation presidential caucus for the 2000 elections, most of the candidates in the hunt for the Republican and Democratic presidential nominations spent many days crisscrossing the state seeking the support of members of their respective parties. These presidential candidates were eager to please local candidates in the hope of gaining their support. As one former Republican state party chair put it, "[w]here else can the state party call up a [state] legislative candidate and say, 'We're bringing a presidential candidate to fund-raise for you' and have the candidate get picky about which one?" In 2000, Republican officials estimated that "presidential candidates . . . attended at least 50 Iowa fundraisers for local candidates." Both Republican and Democratic candidates for local office were able to raise thousands of dollars as a result of the prominence of the Iowa caucus in 2000.

All in all, campaign funding and spending is a hot issue. It is relevant not only in congressional and presidential races, but also closer to home—in our states, counties, cities, towns, and villages.

Sources: Ann O'M. Bowman and Richard C. Kearney, *State and Local Government: The Essentials* (Boston: Houghton Mifflin, 2000), pp. 107–110; quote cited from Leslie Wayne, "Iowa Turns Its Presidential Caucus into a Cash Cow, and Milks Furiously," *The New York Times*, January 5, 2000, p. A16.



voters uneasy about the role of money in campaigns. As perceived by 82 percent of the public, the campaign funding system is "broken and needs to be replaced" or "has problems and needs to be changed."[23]

Many reforms have been suggested. They have ranged from spending limits for candidates and the elimination of soft money to restrictions on PAC contributions, an increase in the size and enforcement powers of the Federal Election Commission, and the public financing of elections. The future of campaign finance reform remains uncertain; what is clear is that the issue will not disappear. During the 2000 presidential and congressional elections, the issue of campaign finance reform was on the list of concerns of many candidates and voters. A number of campaign finance reform bills have been introduced in Congress and in numerous state legislatures as well; the most publicized of the congressional bills was jointly sponsored in the Senate in 1999 by Republican John McCain and Democrat Russ Feingold. Among other features, that bill would have banned soft money, regulated "issue advocacy" ads more stringently, and strengthened disclosure requirements (reporting on contributions and expenditures). Only time will tell whether the pressures from the public for reform will have an impact on elected officials at both the state and national levels of government.

Organizing Campaigns: The Old and the New

In Boston and its suburbs in the weeks before any election, busy street corners and highway overpasses are crowded with silent partisans holding signs that promote their candidate. This ritual, unusual in this country but commonplace to Bostonians, assures the wavering voter that the candidate has support. Campaign tactics range from such homey local traditions to highly sophisticated media shows. Even though most state and local campaigns are unorganized or underorganized and lurch from one improvisation to another as the year unfolds, the most visible campaigns—including those for the presidency, the Senate, and many House seats and governorships—are highly organized.

Campaign Organizations. John Kennedy's 1960 presidential campaign was the first to make significant use of an organization recruited from outside the party structure. Kennedy relied heavily on a personally selected team of advisers and staff, including his brother Robert, to take on the major burdens of running the campaign. That model has been followed in most presidential campaigns since the 1960s and in many state and local races as well.

Candidates assemble personal staffs because the parties historically have been slow to develop polling and media consulting programs and other support systems. The existence of such staffs also reflects the growing sophistication of campaigns. Staff members write speeches, schedule appearances, plan strategy,

and recruit additional talent as needed. In recent years both major parties, but especially the Republicans, have made considerable progress in providing these services. Major state and local candidates now receive sophisticated training and support. Nevertheless, presidential candidates and many congressional and statewide candidates still seek the guidance of their own professional consultants as well as that of their personal advisers.

Campaign Strategy. A critical part of the campaign process is the development of themes (reasons why the public should support the candidate) and campaign strategies. The plausibility of these themes is critically important to a candidate's success. If voters do not believe that a candidate will fulfill his or her campaign promises—if the candidate's words evoke the myth of broken promises—the election game is lost.

In most presidential, House, and Senate races, campaign strategy depends on whether the candidate is an incumbent or a challenger. Congressional incumbents generally have the advantage of name recognition and a record of accomplishments. They often start with a loyal constituency, and, as we have noted, their established position and visibility make it relatively easy for them to raise funds. Not surprisingly, then, most incumbents in the House—between 80 and 99 percent since World War II—have succeeded in their quest for re-election. In 2000, over 95 percent of Senate and House incumbents were re-elected. If efforts to pass a constitutional amendment limiting terms of office in Congress are successful, incumbency will no doubt play less of a role in the re-election process.

Incumbency is also important in presidential elections. No other officeholder in the United States has the same visibility, name recognition, prestige, and opportunity to speak to voters on the issues, and incumbent candidates take full advantage of these assets. Incumbency does not guarantee a second term, however. Since the end of World War II, six out of ten incumbent presidents have not served second terms. The 2000 presidential election was an open race, with no incumbent running for re-election to that office.

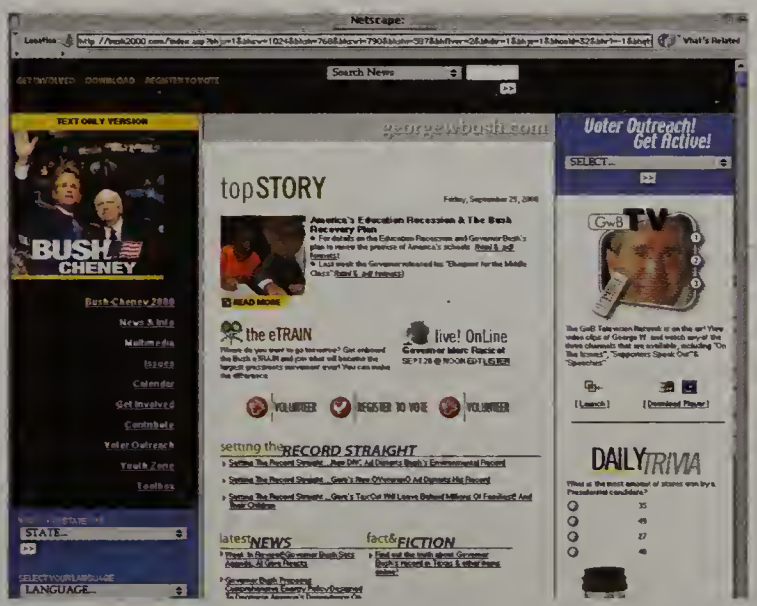
Differences among election outcomes reflect something more than incumbency, however. Winners and losers alike are profoundly affected by the political environment: the partisan leanings of the electorate; the candidates' experience, personality, and leadership skills; and the candidates' positions on policy issues. Most candidates try to ensure that none of these factors polarizes the electorate and drives away potential supporters. Thus they are generally unlikely to take either strongly conservative or strongly liberal stands, although on balance Republican candidates are more conservative than Democratic ones. In 2000, this was particularly the case.

The New Campaign Style. The tools, and consequently the style, of campaigns have changed over the years. One major innovation has been the use of polls, an expensive and relatively new campaign tool that can dramatize or establish proof of the viability of a candidate for major office.[24] In Chapter 5, on public opinion, we looked at the way candidates use polls to evaluate their strengths and weaknesses, assess the relevance of specific issues, and determine the campaign's

Web Sites and Twenty-First-Century Campaigning

By the 2000 elections, the use of web sites by presidential candidates—and many state and local candidates—became a familiar part of political campaigns. Candidates use web sites to do everything from providing voters with information on issues, policy positions, and their family background and pictures to raising money for their campaigns.





impact on the voters. Positive poll results can energize a campaign and draw new support and funding.

Professional pollsters have established strong reputations for the accuracy of their estimates of candidates' standings and the voters' views on the issues. Pollsters' services are now almost universally used by candidates in presidential and many congressional and statewide races. Costs depend on the size of the state and the kind of polling. A statewide poll can run from $25,000 to $50,000.

Another "miracle" of modern campaign technology is the use of computers. All of the major party candidates seeking the presidential nomination in 2000 created an electronic version of their campaign brochure on a personalized Internet web page, posting everything from their personal leadership qualities and their policy positions to baby pictures and favorite Bible passages. In addition, most candidates have engaged in on-line fundraising, seeking financial

contributions from supporters who click on to their web site. Millions of dollars for the 2000 presidential primaries were raised through the Internet. While the Internet and the web page still played a relatively limited role in the 2000 elections, there is every indication that these new campaign tools will have a growing role in future presidential, congressional, state, and local races.

Political consultant An individual, often trained in public relations, media, or polling techniques, who advises candidates on organizing their campaign.

Technological changes over the past three decades have been accompanied by the rise of a new political animal—the **political consultant.** These individuals, often trained in public relations, media, or polling techniques, have replaced the traditional campaign manager in the most visible elections. Some consultants organize all aspects of the race, from the physical appearance of the candidate to the strategies that he or she adopts in presenting positions on issues. Most consultants specialize in certain aspects of the campaign, such as polling, fundraising, or the media,[25] and most generally work exclusively for either Democratic or Republican candidates. David Axelrod, a prominent Democratic campaign consultant based in Chicago who has worked on many statewide and national campaigns, exemplifies the modern-day campaign consultant who serves as a "hired gun." His record of successful campaigns suggests either that he associates with many likely winners or that campaign consultants can be effective managers of campaigns. In all probability, the success of campaign consultants results from a mixture of both.

The Media and Campaigns: Are We Brainwashed?

Use of the media, particularly television, has become almost a way of life in recent presidential, congressional, and gubernatorial races. A campaign is often organized around media coverage. Candidates make decisions about trips, rallies, and press conferences with an eye to attracting the press and meeting its schedules. Because advertising costs so much, campaign managers work hard to maximize free television-news as well as radio and newspaper coverage to promote their candidates' virtues. Consequently, a candidate's speeches and rallies before large crowds are often scheduled so as to appear on the evening local and network news programs.

The media also manipulate the coverage of important campaigns in order to maximize the attention of their audience. Media people try to structure election news so that it will attract and hold the biggest audience possible. Often that means highlighting and even promoting conflict. Candidates are encouraged to attack one another's policies, and television debates, especially among presidential candidates, have become contests with "winners" and "losers." The Kennedy-Nixon debates in 1960 marked the beginning of face-to-face discussion between presidential candidates. In the 2000 presidential campaign, three presidential debates were held as well as one debate between the vice-presidential candidates.

Of course, candidates do not rely on free coverage alone. Advertising is also a crucial part of campaigns. Media consulting firms, such as Greer, Margolis, Mitchell, Burns & Associates and Stevens, Reed, Curcio & Company, provide their

clients with a full range of services, from the production of television spots to the purchase of advertising time on local and network stations. Because television advertising is so expensive—a 30-second political campaign spot that airs during a local news show can cost over $5,000 in a big-city market[26]—it is used primarily in visible and well-funded campaigns.

The high cost of network television advertising has been tempered somewhat in recent years by the significant growth in cable television. Many local cable outlets provide local candidates with relatively inexpensive access to the public. Instead of paying for a political advertisement that may reach hundreds of thousands of viewers outside the election district, candidates can use cable television to advertise their campaign to their prospective constituents. Such access can be cost-effective when cable television advertising rates are low.

CRITICAL THINKING

Do the media brainwash us at election time?

The evidence regarding the impact of the media on campaigns and elections is still very sketchy. Clearly, the use of television has increased the costs of running presidential, congressional, and gubernatorial campaigns, as well as races for other highly visible public offices. Do the media brainwash us into voting for specific candidates? Media advertising is probably more effective in motivating and encouraging a candidate's supporters to go to the polls than in changing the minds of already committed opponents of a candidate. With marginal voters, media news coverage and advertisements are both effective. Because such voters lack strong or even moderate commitment to a candidate, they are more open than partisan voters to the opinions and influence of a news anchorperson or reporter or to the appeals of a paid political advertisement. Finally, the media help shape the issues or nonissues that candidates focus on in an election, thus serving as an agenda-setting force in a campaign. This can have a dramatic effect by determining the quality of debate throughout the race. (See Chapter 9 for a more far-reaching discussion on the role of media in politics.)

Campaigns and Political Parties

By using the media, as well as independent campaign consultants, computers, and polls, many high-visibility office seekers have been able to bypass the political parties, which traditionally played a major role in the campaign process. Presidential, congressional, gubernatorial, and mayoral candidates are now no longer dependent on party volunteers or party campaign-funding events to jump-start their campaigns. That change has shifted the focus from **party-centered campaigns** (where the party coordinates activities, raises money, and develops strategy) to **candidate-centered campaigns** (where paid consultants or volunteers perform those tasks).

Party-centered campaign A campaign in which the party coordinates activities, raises money, and develops strategies.

Candidate-centered campaign A campaign in which paid consultants or volunteers coordinate campaign activities, develop strategies, and raise funds. Parties play a secondary role.

But as we suggest in Chapter 6, the role of parties in the campaign process is still evident at most levels of government. In recent years, parties have learned to adapt to the changing campaign strategies, providing candidates at the national, state, and local levels with consultants, advisers, and workshops on campaign funding and strategy, and, as political brokers, with access to PACs and individual contributors who seek out the party's advice on their campaign

contributions. That last function is critical for candidates who rely on the party to direct individual and PAC contributions to their campaigns.

Political parties are unlikely to return to the center of many political campaigns, but evidence suggests that the parties have adapted to the new campaign style, including the "new kids on the block"—the political consultants who play a central role in the shaping of that style.

CRITICAL THINKING

Do political parties play a role in elections?

Voting and Elections

Voting rules and regulations have changed considerably in the past two hundred years. Until 1920, women could not vote in most states. African Americans and women faced voting restrictions for much of the country's history. Although the vote has now been extended to all adult citizens, not everyone chooses to exercise that prerogative. Therefore, it is important to look at who votes and why.

Who Is Allowed to Vote?

The Constitution originally left the decision on voting qualifications to the individual states. Article I, Section 4, specifies that Congress may regulate by law only the time, place, and manner of federal elections. Any extension of voting rights by the federal government must come in the form of a constitutional amendment or a federal law.

State leaders in the 1780s had little sympathy for the idea of universal voting rights. Indeed, John Jay, a New York delegate to the Constitutional Convention, summed up the view of many of the founding fathers when he wrote in 1787 that "the mass of men are neither wise nor good—those who own the country ought to govern it."[27]

All thirteen states restricted voting rights to white males, and only three of the new states—New Hampshire, Pennsylvania, and Georgia—admitted adult males into the electorate without a property requirement. Even in those states, however, the voter without property had to be a taxpayer. As a result, in 1789, only some 10 percent of the population could cast ballots.[28]

Over the past two centuries, voting rights have been extended to those who do not own property and to African Americans, Native Americans, women, and young people aged eighteen to twenty. But equality was not achieved without an intense struggle. It took a civil war to give citizenship to African Americans. And although passage of the Fifteenth Amendment in 1870 gave African American males the right to vote, they had to struggle for another hundred years before most barriers to voting came down.

Women fought for half a century for voting rights. In 1878, human-rights activist Susan B. Anthony managed to introduce in Congress a proposed constitutional amendment that said, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of



The Internet and New Age Voting

Technology has brought about many changes in the campaign and election process. One aspect of technology that has attracted a great deal of attention in recent elections is the use of the Internet to communicate with others. Here, a woman in Alaska, forgoing the traditional voting booth, uses the Internet to vote for the candidates of her choice. It is likely that in the future many states will allow voters to log on to the Internet from their homes to vote on election day.

sex." That is the wording eventually used in the Nineteenth Amendment, which became part of the Constitution in 1920.

In 1971, passage of the Twenty-sixth Amendment lowered the voting age in national, state, and local elections from twenty-one to eighteen. Several states had already lowered the voting age. There is nothing in the Constitution that prohibits states from setting their own voting standards, as long as these regulations do not violate the Constitution or federal law. Thus women in Wyoming had the vote some forty years before the Nineteenth Amendment enfranchised women in other states. For the same reason, a state can establish any minimum voting age, so long as it is not above the national one.

Congress has intervened several times to break down barriers set up by the states to prevent African Americans and others from voting. The 1970 extension of the 1965 Voting Rights Act banned the use of literacy tests and similar qualifying devices. Then the 1975 extension of the act increased the opportunities for participation for Hispanics. When the act was strengthened and extended for twenty-five years in 1982, it resulted in increased electoral participation by African American voters in the South and by other minorities, including Eskimos. Poll taxes were eliminated in 1964 with the adoption of the Twenty-fourth Amendment. Finally, Supreme Court decisions have laid the remaining voting restrictions to rest. During the 1960s, the Supreme Court struck down property ownership requirements and shortened residency requirements. Today a citizen needs only to have resided in a state for thirty days in order to vote in national elections and in most state elections.

Who Votes?

Americans are proud of their electoral system. Indeed, many citizens would argue that the freedom to select political leaders is one of the most important differences between a democracy and a fascist or communist government. Yet, as we saw in Chapter 5, on public opinion and political participation, relatively few Americans vote. On the average, about 50 percent of Americans can be counted on to take part in presidential elections. In the 2000 presidential elections, only 51 percent of the eligible electorate voted. By contrast, 95 percent of Australians regularly go to the polls, and the turnout in other democracies ranges from 67 percent in Japan to 92 percent in Belgium.

CRITICAL THINKING

Do Americans vote in large numbers?

These comparisons are not entirely fair, however, because voting is easier and simpler in other nations. Americans face much longer ballots and relatively brief and inconvenient polling schedules. In many European countries, voting takes place on weekends. Many European nations also have automatic universal registration, which is not widespread in the United States. As a final incentive to ensure voting, some European countries levy fines on stay-at-homes.

Demographics and Voter Turnout. In Chapter 5, we also learned about the social and economic factors that influence political participation patterns, particularly voter turnout. Individuals who vote regularly are likely to have higher levels of education, larger incomes, and better jobs than nonvoters. Education seems to be the key to voter turnout.[29] As political scientists Raymond Wolfinger and Steven Rosenstone point out, education "imparts information about politics . . . and about a variety of skills, some of which facilitate political learning. . . . Educated people are more likely to be well informed about politics and to follow the campaign in the mass media."[30] In addition, for non-English-speaking citizens, including those of Puerto Rican, Mexican, Cuban, Russian, and Vietnamese extraction, education provides fluency in English, a tool necessary for following and participating in the electoral process.

CRITICAL THINKING

Are young voters as likely to vote as older voters?

Older Americans (except those who are handicapped and therefore have difficulty getting to the polling booths) are more likely to vote than younger ones. For example, citizens between the ages of twenty-four and thirty are 30 percent less likely to vote than those aged thirty-seven to sixty-nine.[31] The reasons for that pattern are complex. Young people are frequently preoccupied with the demands of school, military service, or new careers. They also tend to believe that they have little impact or influence on the political system.

In the past, turnout for women trailed that for men. Today, however, the percentage of women voting is slightly higher than that for men.

The Disappointed Electorate. As indicated earlier, barriers such as pre-registration requirements and long ballots reduce the numbers of citizens who vote. But another obstacle is the myth of broken promises. Many Americans do not take part in elections because they do not believe that government in general and elected officials in particular can solve the country's problems. They also question the honesty and integrity of many political leaders.[32]

This lack of confidence in government is relatively new. The Vietnam War in the 1960s undermined confidence in government, and the Watergate scandal and the resignation of President Richard Nixon diminished it still further in the early 1970s. In 1999, President William Clinton was impeached by the House of Representatives and became only the second president in our history to be tried for misconduct by the Senate. Although he was acquitted of all charges brought against him, the events surrounding the impeachment and the Senate trial were seen as bringing discredit not only on President Clinton but also on the political and governmental system in general. (The impeachment and trial are discussed in more detail in Chapter 11.)

In this atmosphere of cynicism, many potential voters doubt that their vote would matter and simply stay home on election day. Several studies have clearly documented the reasons for failure to vote. First, many people believe that government cannot solve the nation's problems. In addition, as we pointed out in Chapter 6, people are less likely than before to strongly identify with one political party, an identification that once got out the vote. Finally, some people have even begun to question whether it makes any difference who wins elections.[33]

Should we be concerned about the disappointed voter? Some observers say yes, arguing that low turnout undermines representative government, which, they argue, depends on full electoral participation. Others disagree, suggesting that people who are ill informed may make poor choices when they vote. It has even been argued that low levels of voter turnout are a sign of a healthy system—that is, they show that people are satisfied with their government.

Why Do People Vote the Way They Do?

What draws voters to the polls? What influences their choices of candidates? How did voters make their choices for president and Congress in 2000? Obviously, the supporters of each presidential candidate thought their man was the better candidate, and a slim majority of voters felt that a Republican Congress would better serve their interests. But a number of factors influence voter choice.

Issues. Political observers often accuse American voters of focusing on frivolous aspects of campaigns. In fact, many American voters do pay attention to issues and take them into account in making their choices. Of course, no one can review all the positions of every candidate who is running for office. Given that hundreds of issues arise at the local, state, and national levels each year, no one could possibly follow or even have an interest in most of them.

However, in presidential elections there seems to be some relationship between the issues citizens support and the candidates they vote for.[34] In the 2000 presidential election, voters viewed the policy positions of the Democratic and Republican contestants differently. Domestic issues that were important to voters included the candidates' stand on pollution, crime, illegal drugs, education, and health care.[35]

Representative Democracy at Work

Ultimately, political campaigns come down to attracting as much voter support as possible to the polls. This Texas citizen takes advantage of his right to select our government representatives as he votes on election day.



Candidate Image. The candidate's personal qualities, particularly her or his experience and leadership, also count. Furthermore, voters ask themselves how well the candidate represents their own interests and whether the candidate is honest, trustworthy, and approachable by the electorate. One observer labels this process "politics by psychoanalysis."

In the 2000 presidential elections, the American voters clearly were seeking a president with strong character and leadership qualities.[36] While President Clinton received high marks from the public for his leadership on important issues like the state of the economy and the federal budget, his image was badly tarnished by his impeachment in 1999, even though he was acquitted of all charges. In 2000, both George W. Bush and Al Gore came under strong scrutiny by the public regarding their honesty and trustworthiness.

Party Identification. As we saw in Chapter 6, party identification gives voters a general sense of how candidates are likely to approach various issues and policies. This identification can be misleading, as opinions within the parties are quite diverse. Nevertheless, in a world in which voters may know nothing about many of the candidates, the party label serves as a clue to their policy positions. Indeed, according to one poll conducted on election day, 2000, many individuals voted along party lines in making their presidential choice.[37]

Retrospective voting
Individuals basing their votes on the candidates' or parties' past record of performance.

Retrospective Voting. When individuals base their votes on candidates' or parties' past performance, we say that they are engaging in **retrospective voting.**[38] Incumbents are judged on their records in the office; challengers may be judged on what they did in previously held offices. In effect, voters are looking at the past to evaluate the future—one rational way to make judgments.

Is retrospective voting common? Evidence suggests that it is. For example, in 1992, a majority of voters were dissatisfied with President Bush's record and his failure to keep his promise not to raise taxes. Bill Clinton benefited from that retrospective discontent. In 1996, peace and prosperity assured the public that Clinton should be reelected to a second term. The 2000 presidential elections were affected in two ways by retrospective voting. On the one hand, a strong economy during the Clinton administration helped garner support for Vice President Gore in his bid for the presidency. On the other hand, Republican presidential candidate George W. Bush gained support from voters discontented with the Clinton administration in light of a major sex scandal and the impeachment of the President.

CRITICAL THINKING

Do we elect presidents by popular vote?

Group Support. People of different genders, races, age groups, and educational and political backgrounds vote in predictable and yet divergent ways for political candidates. In the 2000 election, for example, George W. Bush drew strong support from conservatives, traditionally allied with the Republican party, while not surprisingly, Al Gore drew deep support from liberals.

Republican Bush received a majority or plurality of the vote from males, whites, college graduates, and people of the various Protestant faiths. In addition to these groups, Bush also drew strong support from the wealthy with family incomes over $75,000, gun owners, and the Christian conservative right.

The closeness of the 2000 presidential elections was reflected in the equally strong support that Democrat Al Gore received from different groups. A majority of women, African Americans, Hispanics, Asians, Catholics, Jews, senior citizens, and the less affluent with family incomes under $30,000 voted for Gore. He also received strong support from people aged eighteen to twenty-nine and households with union members.

The gender gap was clearly evident in the 2000 presidential election, with an 11 percent overall advantage for Gore among female voters. Bush showed similar strength among male voters with an 11 percent overall advantage over Gore.

Unlike the 1992 and 1996 presidential elections, no third-party candidate seriously challenged the Republican or Democratic candidate for the support of any single group. Ralph Nader of the Green party, who drew only 3 percent of the overall presidential vote, was able to attract 6 percent of both the liberal and independent voters. Nader's strongest impact was in several states—including New Hampshire, Oregon, and Florida—where he attracted enough voters to influence the outcome of elections in those states.

These data raise some important questions about future voting patterns. In 1992 and 1996, with Reform party candidate Ross Perot's strong showing among voters, it appeared that the American people might be ready

THE 2000 ELECTION

Americans went to bed on the night of November 7, 2000, expecting to awaken the next morning to news about whether Al Gore or George W. Bush had been elected President. That's the way it's been the morning after each election since World War Two—even in the extremely close elections of 1948, 1960, and 1968. But it would take many more weeks before George W. Bush was declared the winner of the 2000 presidential election. Why did this happen?

Americans talk about elections as "contests" or "races" that will ultimately choose winners and losers. Candidates "campaign" against each other, and many of the terms used to describe elections are drawn from the language of war. For those in charge of running election campaigns, these are not merely metaphors. They perceive electoral politics as a serious game in which the objective is to implement strategies that lead to victory for their candidate.

As the 2000 election made clear, winning the presidency is not simply a matter of getting the most popular votes. As described in the text, those working for the Democratic or Republican candidates must start with the goal of getting a majority of votes (270) in the electoral college (see Figure 7.1). It's the candidate with the best electoral college "game plan" who usually wins.

Before the current era of high-tech campaigning, the parties typically relied on strategies that played to their regional and demographic strengths. The Republicans could assume an advantage in small town and rural America while stressing conservative pro-business values; Democrats, in contrast, depended for many decades on their base in the South and in major urban centers of the industrial north, as well as their links to organized labor. Campaign strategies would be constructed around these foundations depending on perceived opportunities to mobilize their respective voter base while making inroads into the traditional base of their opponents.

While the rules of the electoral college haven't changed, today's campaign strategists do have more high-tech tools to use to reach the goal of 270 electoral college votes. "Tracking polls" have made it possible to monitor how well candidates are doing in specific geographic areas or among specific groups of voters, and modern marketing techniques are used to convince undecided or wavering voters in "key states." Campaign efforts are coordinated on a national level, and resources can be shifted at a moment's notice when polls indicate there is an opportunity to gain some advantage over the opposition.

Going into the 2000 election, both Gore and Bush believed they had a few key "safe" states from which to build their base. However, Gore's campaign had to shift its focus away from some key "battleground" states like Ohio and New Hampshire when polls made it evident that Green party candidate Ralph Nader was drawing enough support to pose a threat in states that the Gore campaign had regarded as "safe." With less than two weeks to go before the election, the Gore campaign was spending more time and money in states such as Wisconsin, Washington, and California than originally planned, for if Nader were able to pull enough votes away from Gore in those states, Bush would get a plurality of the popular vote and claim the all-important electoral college votes.

Similarly, as it monitored public opinion polls in various states, the Bush campaign realized that it could win the electoral college votes in the states of Tennessee and Arkansas. In the last days of the campaign, the Bush strategists poured additional resources into those states and even had the candidate visit each on the day before the election. The strategy worked, for Bush carried both states.

In the end, George W. Bush was elected president, having lost the popular vote to Al Gore by over 500,000 votes but having won the electoral college vote, 271 to 267. Reacting to the long-delayed determination of who would be the nation's 43rd chief executive, many Americans have called for changing the way we elect the president. Whatever changes are made in the rules of the game now or in the future, we can be certain that those who run presidential campaigns will adapt by developing new strategies that give their candidate the best chance of winning the White House.

for an independent, third-party movement. However, the less impressive showing of third-party candidates for the Green party (Ralph Nader, 3 percent) and the Reform party (Pat Buchanan, 1 percent) seems, at least temporarily, to have put the brakes on the movement toward a strong national third party in the nation.

The Electoral College

Electoral college The system set up by the Constitution that provides for the people in each state to elect a number of electors equal to the number of senators and representatives for that state. In most states, the presidential candidate winning the plurality vote in that state receives all its electoral college votes.

The constitutional environment in which presidential campaigns take place is the **electoral college.** Although the founders believed in representative government, they hesitated to place the selection of the president directly in the hands of the people. The system that evolved provides for election by the people of each state of a number of electors equal to the number of senators and representatives representing that state in Congress. For example, Michigan's congressional delegation includes two U.S. senators and sixteen members of the House. Thus, in presidential elections, that state's voters elect eighteen electors to the electoral college.*

Until the drama of the 2000 presidential election, most Americans understood little about the electoral college, assuming that they were casting ballots directly for the presidential candidate of their choice. They are instead really voting for a slate of electors (equal to the size of the state's congressional delegation) who have committed their support to that presidential candidate. In only twelve states do the names of the actual electors appear on the ballot next to the presidential candidate's name. State law determines how a person becomes an elector. In Pennsylvania, the presidential candidates select their electors. In thirty-eight states, the electors are nominated at state party conventions. In most of the remaining states, electors are selected in primaries or by state party committees.

In most states, the presidential candidate who wins a plurality of the vote in the state receives all its electoral college votes. (The two exceptions are Maine and Nebraska. Maine awards two of its electoral college votes according to the statewide vote and two according to which candidate wins in each of the two congressional districts. Nebraska, with five electoral college votes, has a similar system.) Members of the electoral college chosen in the November general election in each state meet in December and vote for the president. The votes in each state are forwarded to Congress, where an official count takes place on the first day of the congressional session in January. Only after completion of that vote count is the official winner of the presidential election declared. A total of 538 electoral college votes are cast in the fifty states and the District of Columbia;

*It is important to point out that after the national census is completed in 2000, states that lose population will have their number of seats in the House of Representatives reduced and subsequently will have fewer members of the electoral college. States that experience an increase in population will increase their representation in the House and subsequently will elect more members of the electoral college.

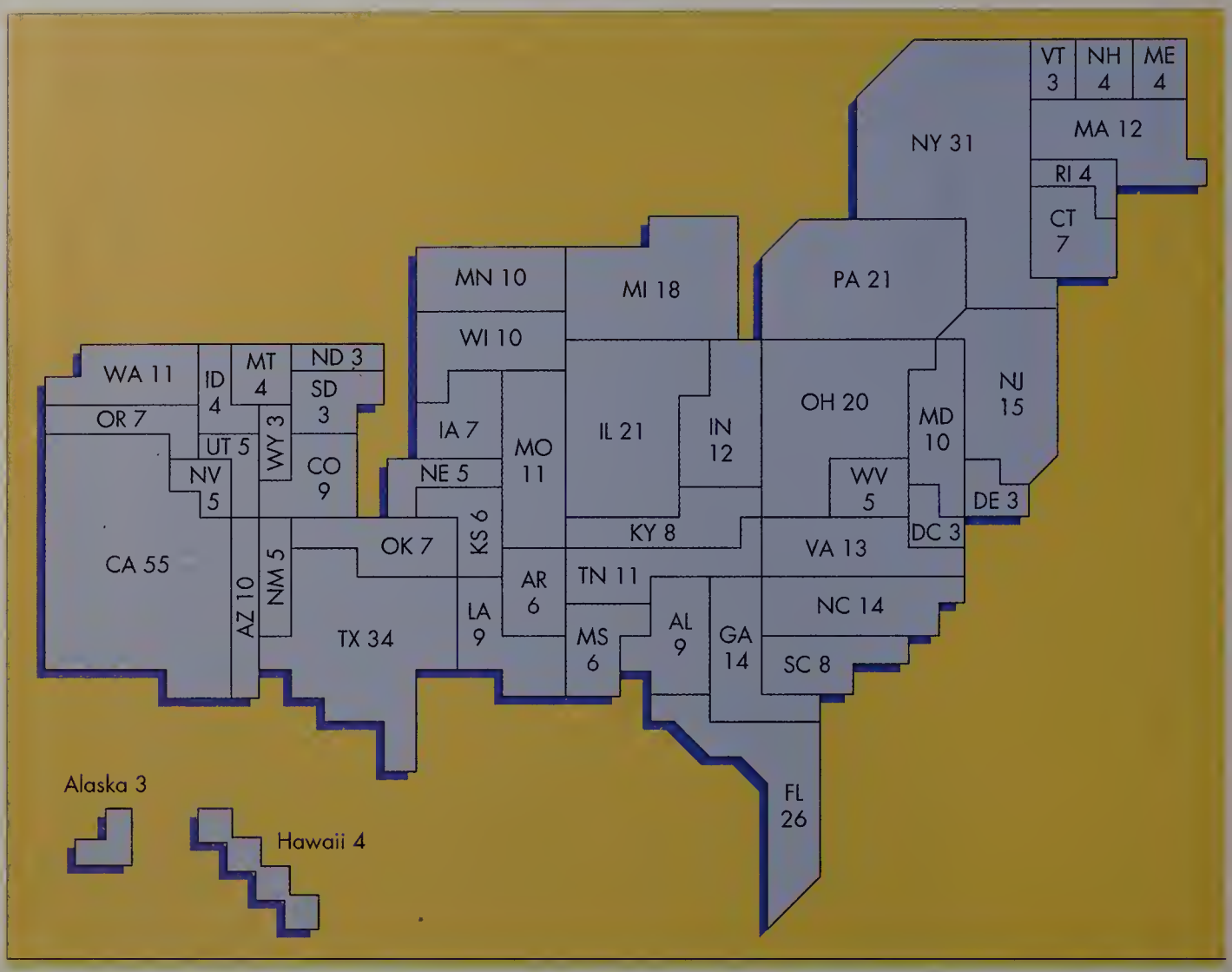


FIGURE 7.1
The United States According to Electoral College Votes

This distorted map will give you a sense of the electoral power of the most populous states, such as California, New York, Texas, and Pennsylvania.

Source: The United States According to the Electoral College Votes Chart, September 29, 1984 (with updated changes based on the 2000 census projections). Reprinted courtesy of *The Boston Globe*.

the presidential candidate receiving the majority of these votes wins the election. The vice president is selected in the same manner.

At least two problems with this system have been noted. In twenty-one states, the electors whose party candidate wins a plurality of the state's popular vote are required to vote for that candidate. In the remaining twenty-nine states, an elector is not required by law to support the candidate who has won the popular vote in the state. Disloyal electors have voted for a candidate other than the winner of the popular vote in seven elections since World War II, although the final

outcomes of those presidential elections were not affected by their actions. In 1988, one disaffected West Virginia Democrat who was a member of the electoral college voted for Lloyd Bentsen for president. Bentsen was the running mate of the Democratic presidential candidate, Michael Dukakis.

A second problem is that a president can be elected by a majority of the electoral college without having a majority of the national popular vote. That was the case in 2000, when George W. Bush was elected president with 271 electoral college votes, although his opponent, Al Gore, received more popular votes. A number of reforms have been proposed to deal with this problem, including the selection of the president by direct popular vote. Yet no consensus for a constitutional amendment has emerged, and thus the indirect election of presidents through the electoral college has remained intact.

When campaigning for the presidency, candidates are well aware that gaining a majority of the popular vote is not enough. A candidate must be successful in garnering pluralities in a sufficient number of states to ensure receiving a majority of the electoral college vote (see Figure 7.1). Not surprisingly, most candidates focus much of their attention on the larger states, such as California, New York, Texas, Pennsylvania, Illinois, Ohio, Florida, and Michigan—states that have significant numbers of electoral college votes.

Promises, Promises: The Link Between Campaigns and Public Policy

As we noted earlier, poll results show that the public doubts whether the promises a candidate makes in a campaign have any bearing on the policies that candidate promotes once in office. We believe that this perception of broken promises is a myth—a simplification of the facts.

CRITICAL THINKING

Do elected officials keep their promises?

Of course, candidates do not fulfill all the promises they make. How could they? The collective wish list of Americans, let alone the candidates, is endless. But candidates try hard to keep many of their promises.[39] Party platforms are, in effect, their agreements with the electorate. It is as if they were saying: "This is what I think. This is what I will try to do. If you agree with what I think, at least on many of the issues, then vote for me." (A slight variation of that invitation is, "Even if you don't agree with me, give me a chance. I'm right.")

As Table 7.2 shows, presidents have been reasonably successful at fulfilling their campaign promises and persuading Congress to act on those promises. For example, during the Clinton administration, the president pledged to shore up the economy, appoint moderates to the federal court system, and pass welfare reform. He accomplished all those goals.

All presidents make some promises that they fail to keep—but not for want of trying. Why did they fail? Why will some of President George W. Bush's policy proposals succeed while other policy initiatives will receive only limited support

MYTHS IN POPULAR CULTURE

Radiohead, *Bulworth,* and Campaign Lies

As we noted in Chapter 1, popular music has often echoed the politics of the day, from the patriotic and nationalistic songs of the American Revolution and Civil War to the protest songs of the 1960s. Popular music often provides us with vivid and accurate pictures of the world around us, although at times the image it projects can be very distorted.

A recent song by the rock group Radiohead exemplifies this distortion. In their song "Electioneering," the verses reflect a cynical view of the campaign process:

> I will stop at nothing.
> Say the right things when electioneering,
> I trust I can rely on your vote.

The cynical message delivered by Radiohead is no different from the one depicted in the 1998 movie *Bulworth,* starring Warren Beatty. Beatty portrays a fictional U.S. senator, Jay Bulworth, a depressed character who arranges his own assassination, only to change his mind three days later. As part of his change of heart, he decides to tell the unmitigated truth no matter what the consequences, thus distinguishing himself from the average politician, who is, according to the movie, a pathological liar. The message is clear: Bulworth is a good guy who will tell the truth no matter what the political consequences, while all those other politicians will only make false promises and distort the truth.

Do some candidates corrupt the political process by making false promises as they seek the support of potential voters? While reality suggests that such campaigns do take place, mythmaking also argues that music and movies, as a form of popular culture, can and do misrepresent the campaign process. In the United States, we hold over 500,000 elections in every four-year cycle between presidential elections, with more than a million candidates participating in those campaigns. Most campaigns are run by candidates with small staffs who work hard to establish policy positions and to run effective and sincere campaigns. The messages of both "Electioneering" and *Bulworth* distort our image of the campaign process, generating and reinforcing myths about the nature of many campaigns in the United States.

or fail entirely to be implemented? A president's programs can fail because they are poorly conceived or ineffective. They can also fail because Congress refuses to cooperate. Bush faced strong opposition from some members of Congress on two initiatives early in his administration: tax cuts and school vouchers. Sometimes one or both houses are controlled by the opposition party. Sometimes the president is not able to persuade his own party to support his programs. Regarding their campaign promises, then, presidents are successful in some areas and unsuccessful in others.

In short, the politics of implementation is complex, but successful candidates try and often manage to deliver on many of their promises. These promises are not made in a vacuum, and more often than not they represent the genuine intentions of the candidates. While voters are often disappointed by the slow

TABLE 7.2
A Scorecard on Campaign Promises

Presidents try to keep their promises and often succeed. Some failures reflect poorly conceived plans rather than lack of effort.

Full or Partial Fulfillment of Presidential Party Platform Promises*

Carter	Reagan (First Term)	Reagan (Second Term)	Bush	Clinton (First Term)
67%	47%	49%	75%	68%

*Domestic policy platform promises only.

Source: Unpublished data from a project by Terry Royed and Steve Borrelli entitled "Party Pledges and Policy Change in the UK and US, 1970s–1990s," funded by National Science Foundation grant #SBR-9730785. Reprinted by permission of authors.

processes of government and the incomplete realization of platform agendas and campaign promises, they also often "win" when they place their wishes, desires, and expectations in the hands of our elected officials. For the voters, elections do more than just select our representatives. They provide for citizen empowerment.

Conclusion: Do Elections Matter?

Americans are ambivalent about elections. The public acknowledges their importance in the democratic process but takes part in elections in relatively low numbers, compared with many western European democracies. To understand the election process better, we have examined in this chapter the facts behind the myth that candidates break their campaign promises. Although that myth contains some truth, it is by and large inaccurate and misleading.

What is the reality? First, although some campaign promises are not fulfilled, many are. Furthermore, although candidates run for office for personal reasons—power is a strong motivator—they also run in order to implement promised policies. And they are often successful in achieving that goal. An analysis of presidential performance, for example, shows that recent presidents have managed to fulfill many of their promises either partially or completely.

We also examined the relationship of a number of variables to election campaigning and voting behavior, particularly the influence of money. Money is a very important—indeed, a necessary—part of most campaigns, but it is not the only important factor in most elections. Other elements, such as incumbency, issues, personalities, skills, national trends, and partisanship, strongly influence election outcomes. The voters' characteristics—religion, ethnic identity, race, age, and so forth—also appear to affect how voters view the political world and for whom they cast their ballots.

Summary

1. Elections begin with the nomination of candidates. Those who run for office are motivated by personal ambition and by a commitment to policy goals.
2. Candidates are nominated in open meetings (caucuses) or, most commonly, in primary elections.
3. Presidential nominations take place at national conventions, which today generally ratify the outcome of often-complicated primary and caucus campaigns.
4. The escalation of campaign costs led Congress to pass the Federal Election Campaign Act, which sets limits on contributions and expenditures in federal elections. The law has given rise to a new source of funds, political action committees (PACs).
5. Most highly visible election campaigns—including those for the presidency, the U.S. Senate and House, and governorships, and many statewide and large-city mayoral races as well—are highly organized, with staffs that include professional consultants and personal advisers. A campaign's outcome can depend on whether the candidate is an incumbent and on other factors in the political environment, particularly the presence of the media. Campaigns have increasingly become candidate-centered instead of party-centered.
6. Women and nonwhite males have faced voting restrictions for most of the nation's history. Voting rights have been extended to these groups and to young people between the ages of eighteen and twenty by constitutional amendment and by federal and state laws.
7. Voter turnout for U.S. elections is low compared with that in other countries. Wealthy, well-educated, older individuals are more likely to vote than members of other groups. Low turnout has been attributed to laws and institutional factors (such as preregistration requirements and long ballots), as well as to voters' loss of faith in government.
8. People base their choice of candidate on issue preferences, on the personal qualities and past records of the candidates, and on their party and social identity. The candidates' positions are not idle promises. Once elected, candidates try to fulfill their campaign pledges.



Net Work

Most candidates for office at the national or state level (and even some local candidates) post web sites. There you can find information about the candidate's positions on issues, read or listen to recent speeches, and see a schedule of upcoming events.

Find out about the candidates in an upcoming national, state, or local election. Using a search engine, find the web sites for the Democratic and Republican party candidates and any minor party candidates. What positions has each candidate taken?

Other helpful web sites with information on campaigns and campaign funding include

- The Federal Election Commission **(http://www.fec.gov),** which provides data on campaign funding for federal elections.
- Public Agenda **(http://www.publicagenda.org),** which provides research on major issues in a nonpartisan venue.
- The Center for Responsive Politics **(http://www.crp.org),** which provides extensive campaign contibution information.

- Follow the Money (**http:www.followthemoney.org**), which provides information on campaign contributions for state races.
- Voter and registration demographics from the Census Bureau: **http://www.census.gov/population/www/socdemo/voting.html.**
- The Polling Report (**http://www.pollingreport.com**), which provides polling data on elections and campaign events.
- The Center for American Women and Politics/Rutgers University (**http://www.rci.rutgers.edu/~cawp**), which provides data and reports on women and women's voting behavior.

Would you like to know more about how much money is being raised and spent by candidates for the office of the House of Representatives in your congressional district? Go to the FEC web site to find out. You can also learn a lot about PAC spending and contributions to federal candidates from the FEC.

If you are interested in campaign financing in your state election, the Follow the Money web site is a good place to start. You could also use a search engine to find information about campaign finance laws in your state.

CHAPTER 8

Interest Groups

- **Movers and Shakers: Interest and Other Advocacy Groups**

Interest Groups: Economic, citizen activist, government-related
Lobbyists: Definition and description
Political Action Committees: Funding campaigns

- **What Makes an Interest Group Powerful?**

Size: Potential source of power
Unity: Internal cohesion
Leadership: Important to success
Information and Expertise: Major resource of lobbyists
Money: Fundraising tactics; the free-rider problem

- **Interest Group Tactics: You Don't Lobby with Hundred-Dollar Bills and Wild Parties**

Lobbying: Definition and description
Electioneering and Policymaking: Contributions, endorsements, scorecards
Building Coalitions: Cooperative lobbying efforts
Grassroots Pressure: Power to the People
Litigation: Using the courts
Hard-Line Tactics: Civil disobedience

- **Interest Groups and Democracy**
- **Conclusion: Corrupt or Constructive?**

MYTH & REALITY

Are all interest groups corrupt and self-serving?

MYTH & REALITY

Big money is at stake, and a particular group of special-interest institutions and their lobbyists know it. In 1999 alone, these institutions received over $15 billion in federal funding. Collectively, they spend millions of dollars lobbying for those funds while also contributing heavily to both Democratic and Republican congressional campaigns.[1] Lobbyists who represent these special-interest institutions strive to influence Congress and the executive branch on behalf of their pet projects. What interest are we talking about? Higher education.

Many universities and colleges, including Boston University, Harvard, Columbia, Northwestern University, the University of Miami, and Tufts University, pay lobbyists to represent them in Washington, D.C., in order to obtain federal funds for research projects. Other universities and colleges, including the University of Hawaii, the University of Pittsburgh, the University of South Alabama, the University of Idaho—and perhaps including your university or college—have benefited from congressional funding. The large Washington, D.C., lobbying firm of Cassidy & Associates has thirty colleges and universities as clients and collectively bills them some $40 million a year.

CRITICAL THINKING

Are all interest groups corrupt and self-serving?

Universities and colleges are only one of many different interest groups in Washington, where some twenty thousand lobbyists represent the interests of various groups and individuals before the members of Congress and their staffs and before executive branch officials. Although some special-interest groups, such as universities and colleges, are seen as being as American as apple pie, many Americans see most interest groups and lobbyists in a different and harsher light.

Interest Group Lobbying

Whenever Congress is in session, you will find lobbyists seeking access to our elected officials in order to try and influence their decisions. Here, hundreds of interest-group representatives wait outside the congressional hearing room, where hearings on national health care policy are being held, awaiting the results of their lobbying efforts.



They see lobbyists as wheeler-dealers and government as being influenced by a relatively few big interests. They suspect interest groups of dishonesty and of corrupting the political process by unduly influencing government, most often by "buying" members of Congress through campaign contributions. Past polls have reflected such skepticism. In one national poll, 72 percent of the respondents agreed that "special interests were rated roughly even with 'international terrorism' as the greatest threat to the nation's future."[2] Of those responding to another survey, 57 percent were very concerned that big special-interest money has too much influence in our political system.[3] Many Americans continue to question the roles of special-interest groups and lobbyists in government activities.

Apparently, a majority of Americans believe in the *myth that interest groups are a corrupting influence in politics.* Though interest groups are undoubtedly playing a bigger role in the American policymaking process, whether they are a corrupting influence is open to question. We take up this issue at the end of the chapter. Before we can evaluate the myth and reality of interest groups, however, we must look at the role they play in American politics and at the resources and techniques they use to influence politics.

Movers and Shakers: Interest and Other Advocacy Groups

Our first task is to define three key terms: *interest groups, lobbies,* and *political action committees (PACs).*

Interest Groups

Interest group Any organized group of individuals who share common goals and seek to influence government decision making.

A political **interest group** is any organized group of individuals who share common goals and who seek to influence government decision making.[4] Such diverse groups as the National Rifle Association, the Sierra Club, the U.S. Chamber of Commerce, and the League of Women Voters all fit this definition. Even college students are represented by interest groups—for instance, the Coalition of Independent College and University Students and the United States Student Association.

Interest groups differ from political parties.[5] In Chapter 6, on parties, we emphasize that parties are broad-based coalitions, with policies that cover a wide range of issues. A party's ultimate goal is to contest and win elections in order to control and operate government. In contrast, interest groups put forth a limited set of demands.* Although they sometimes try to affect the outcome of certain

*Some interest groups, such as Common Cause and the Liberty Federation, support a wide range of issues. Even these two groups, however, usually focus on a few key issues and direct their resources to them.

elections, interest groups do not run candidates for office or attempt to control or operate government. Their primary concern is to influence policy in their own area of interest.

Differing in size and make-up, interest groups pursue varying objectives. They also serve as an important link between their members and elected and appointed government officials. What justifies the existence of interest groups in a democratic, representative form of government is their role in making members of the executive, legislative, and judicial branches of government more aware of the needs and concerns of various groups in America. Many people join interest groups to promote their own economic well-being or to effect political and social change. They believe that their goals are best served by acting together with other citizens.

Economic Interest Groups. Among interest groups, business, labor, professional, and agricultural groups are the most enduring and powerful types. That fact is hardly surprising, given the intensity of most people's preoccupation with their own economic welfare.

More than three thousand individual corporations and businesses employ lobbyists, or spokespersons for corporations and businesses, in Washington.[6] The concerns of these organizations depend on the business in question and on the political climate. Tax laws, government subsidies, antitrust laws, tariffs on imported goods, and consumer product and environmental regulations may all affect the cost of doing business. In recent years, issues like minimum wage legislation and a national health insurance program have led to increased lobbying efforts on the part of the business community.

Business and trade associations are another type of economic interest group. Under the umbrella of business associations are the large and influential U.S. Chamber of Commerce, with a membership of more than 250,000 individuals and companies; the Business Roundtable, made up of approximately 200 of the largest industrial, commercial, and financial businesses in the nation; and many other groups. These associations represent some of the most powerful interests of corporate America.

Trade associations, which represent entire industries, also have widely divergent interests, ranging from government regulation of food and drugs to the regulation of the import of beef from Argentina. These groups are interested in government regulations that may affect the way a company does business. The National Cable Television Association, for example, closely monitors government regulations covering the cable industry—regulations that may have an impact on how much you and I have to pay for cable television service. Even lobbyists have a trade association: the American League of Lobbyists.

Another important type of economic interest group is labor organizations. The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), an umbrella organization of sixty-eight labor unions, has more than 13 million members. Along with the United Auto Workers, the Teamsters, and many other labor organizations, the AFL-CIO has for many years represented

the interests of labor in the state capitals and in Washington. Individual labor unions also lobby independently of the umbrella groups. For example, the Independent Federation of Flight Attendants keeps on top of airline industry issues, and representatives of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers focus attention on related legislative interests, including shipbuilding, tool making, and construction of nuclear and fossil-fuel plants.

Professional associations also bring the economic interests of their particular membership to the government's attention. Two of the most powerful, the American Bankers Association and the Association of Trial Lawyers of America, have large lobbying budgets and maintain full-time staffs in Washington and in many state capitals. Smaller, less-powerful associations, such as the Clowns of America, have fewer resources but also try to protect their members' interests in regard to workers' compensation, tax laws, and other legislation affecting their professions.

Farmers, as an economic interest group, are a relatively strong economic force in contemporary American politics, as upwards of 20 percent of the work force is directly or indirectly employed in agribusiness. One of the major goals of agricultural interest groups is protection from fluctuating prices for meat, grain, fruit, and other agricultural products, which affect the income of the groups' members.

Citizen Activist Groups. Not all interests are purely economic. In the last three decades, there has been an increase in the number of citizen activist groups. These groups often try to represent what they deem to be the interests of the public and so are referred to as **public interest groups.**[7] Other organizations focus on specific causes or serve as advocates for those who are not able to represent themselves.[8]

Public interest groups Citizen activist groups that try to represent what they deem to be the interests of the public at large.

Public interest groups such as Common Cause (a grassroots organization supported by member dues) and Public Citizen, Inc. (a loose affiliation of groups formed by the consumer activist Ralph Nader and supported by foundation grants) were part of an explosion of citizen lobbies in the 1960s. These groups have always tried to represent what they see as the public's interests on such issues as civil rights, consumer protection, campaign reform, and environmental regulation.

Single-issue group Any activist group that seeks to lobby Congress on a single or narrow range of issues.

A cause group with an extremely narrow focus becomes known as a **single-issue group.** For example, the major goal of the Bass Anglers' Sportsman Society is to further the interests of bass fishing. The National Rifle Association (NRA) and the Gun Owners of America work to preserve the right of Americans to own handguns and rifles. The National Abortion Rights Action League (NARAL) fights for legislation and court decisions that protect the right of women to have abortions.

Some citizen activist groups serve as advocates for people who may be unable to represent their own interests individually.[9] For instance, the National Association for the Advancement of Colored People (NAACP), the Child Welfare

Interest Group Protests

One tactic that interest groups use to win support and to encourage legislative action is the protest. Here, the National Organization for Women (NOW) marches in Florida. Issues for NOW include women's rights, salary equity with men, health policies, and numerous other issues affecting women.



League of America, and the American Cancer Society assist their target populations by lobbying, providing the public with information, and taking cases to court.

CRITICAL THINKING

Is government just a target of lobbyists, or does government also lobby in the political system?

Government-related Interest Groups. Not only do governments receive pressure from lobbyists, they also act as lobbies. San Francisco, Baltimore, Chicago, Chattanooga, and Newark are only a few of the cities that have lobbyists representing their interests in Washington on matters ranging from budget and appropriation legislation to Medicare, housing, and transportation. Indeed, the offices of hundreds of cities and states are listed in the *Washington Representatives Directory*. The efforts of these cities are directed toward ensuring that they receive their share of federal funding, funding that can ease the burden of local taxes. Cities also heavily lobby their state capitols for various forms of financial aid as well as in support of or against legislation that affects them.

In addition, a number of associations of government officials represent the collective interests of their members. These organizations include the U.S.

Conference of Mayors, the International City Management Association, the National League of Cities, the National Association of Counties, the Council of State Governments, and the National Governors' Association. Local and state governments have come to depend on Washington for funds to pay for everything from public roads to new airports and schools. These associations help lobby for those funds.[10]

Even foreign nations have lobbyists looking after their interests. Such nations as Turkey, Jamaica, Guinea, and the African Republic of Transkei have lobbyists in the United States that represent their interests before Congress and the executive branch. Those interests can range from military and economic assistance programs to technical advice on how to build an electric power plant. This globalization of interest group activity extends to the private sector, too. Groups like Amnesty International, a worldwide watchdog organization, lobby against any government's repression and torture of its citizens. The group has offices in the United States, Great Britain, and throughout the world.

Lobbyists

Lobbyist An individual who works for a specific interest group or who serves as the spokesperson for a specific set of interests

Who does the work for an interest group? A **lobbyist** is an individual who works for a specific interest group or who serves as the spokesperson for a specific set of interests. Lobbyists engage in the act of lobbying—that is, they try to affect government decision-making by influencing legislators and members of the executive branch to support or reject certain policies or legislation.

Although some interest groups maintain their own staffs of full-time lobbyists, other groups hire a lobbying firm to represent them in Washington or in various state capitals. Increasingly, lobbying has become a professional, full-time occupation. Many lobbyists are lawyers, former members of the executive branch or of Congress, or former employees of one of the hundreds of federal agencies. Government experience and contacts, along with accumulated expertise, are valuable assets in the lobbying game.

As we shall see later in this chapter when we discuss the tactics of interest groups, the effectiveness of the lobbyist as spokesperson for an interest group is generally central to that interest group's success in achieving its goals.

Political action committees (PACs) Organizations set up solely for the purpose of contributing money to the campaigns of candidates who sympathize with particular goals. A PAC need not be affiliated with an interest group but can be unaffiliated, representing an ideological position or even a candidate or officeholder.

Political Action Committees

If the myth of corruption has tainted interest-group politics in recent years, a major source of that concern has been **political action committees (PACs).** As you learned in Chapter 7, on campaigns and elections, these are independent organizations set up to collect campaign contributions from individuals who support their goals and to pass those contributions on to candidates. PACs resulted from a change in campaign finance laws designed to limit interest groups' financial involvement in elections.[11]

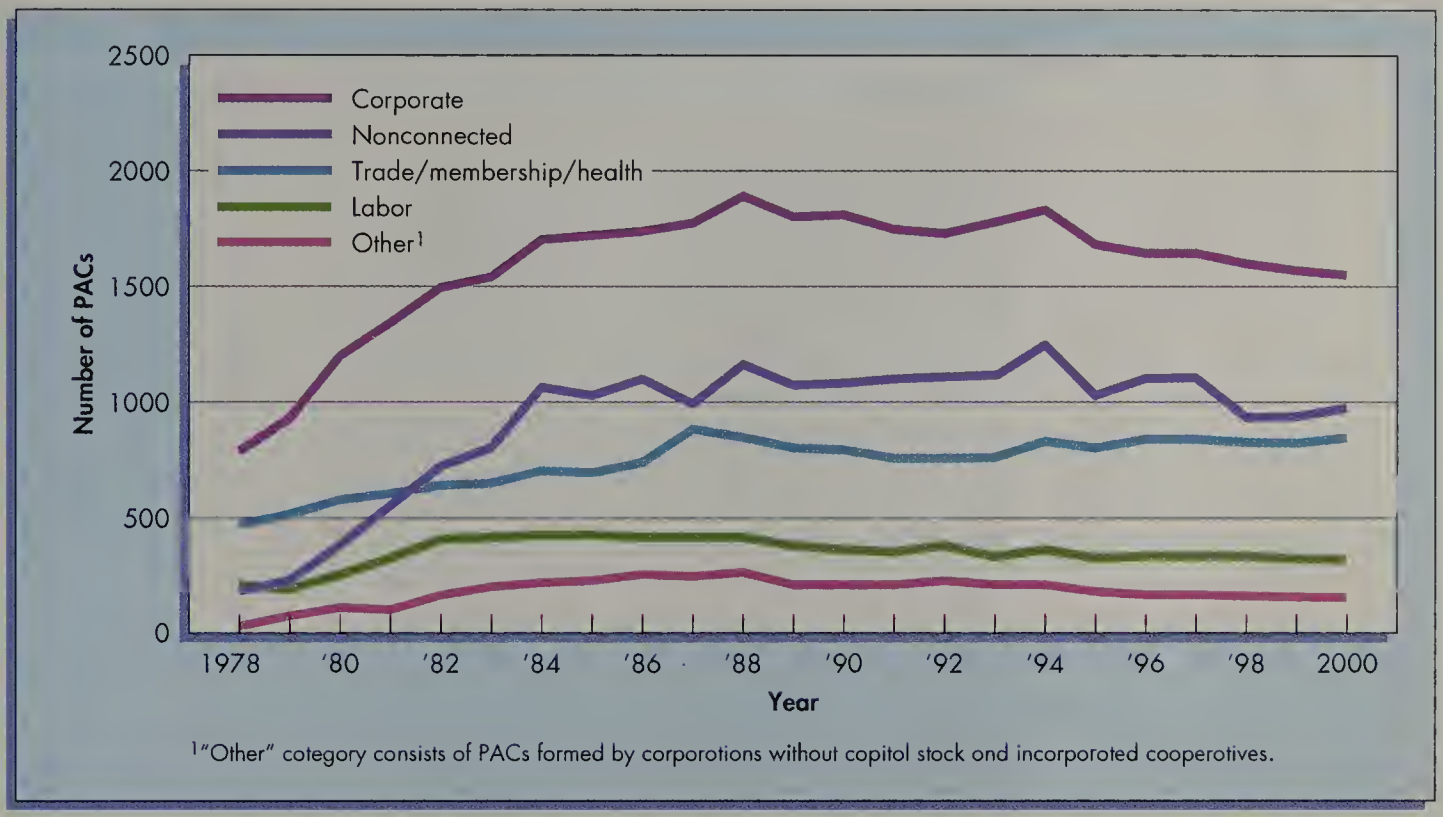


FIGURE 8.1
An Explosion of PACs

Unions invented them but corporations forged ahead with them when political action committees were in their infancy. Corporate, union, and trade PACs have tended to support candidates, whereas non-affiliated PACs have worked on negative campaigns.

Source: Federal Election Commission press release, January 14, 2000.

This change came about in the 1970s, when Congress passed the Federal Election Campaign Act. The act provides for a rigid reporting system covering money raised and spent for campaigns; it drastically restricts campaign contributions and prohibits corporations and labor unions from directly raising funds for or making contributions to political campaigns. However, Congress permitted unions and corporations to set up and administer independent organizations designed to collect and disburse campaign contributions (see Electioneering and Policymaking, p. 224).

Unions invented PACs, but as you can see in Figure 8.1, PACs sponsored by corporations rapidly surpassed union-sponsored PACs in numbers. Now almost every kind of group uses PACs. Trade and professional groups (for example, the American Institute of Certified Public Accountants), unions (such as the American Federation of Teachers Committee on Political Education), corporations and businesses (for example, the American Dental Political Action Committee), and cooperative groups (such as the Committee for Thorough Agricultural Political Education of Associated

Milk Producers, Inc.) have PACs that solicit money and contribute it to political campaigns.

A PAC need not be affiliated with an interest group. Unaffiliated groups (such as the Fund for a Conservative Majority and Voters for Choice), often representing strongly held ideological positions on the political spectrum, have grown in numbers over the past twenty years. The number of personal PACs has also grown; these are established by officeholders or would-be officeholders to raise money for their own campaigns or for self-promotion, or to assist in the election or reelection of partisan or ideological colleagues. Some of the leading personal PACs include the National Congressional Club (Senator Jesse Helms, R-N.C.), Effective Government Committee (Representative Richard A. Gephardt, D-Mo.), New Republican Majority (Senator Trent Lott, R-Miss.), and Fund for a Democratic Majority (Senator Edward Kennedy, D-Mass.). Many of these personal PACs are funded by friends and supporters of the individual or by other PACs.

What Makes an Interest Group Powerful?

What accounts for the success of interest groups? What problems do they experience or create? In this section, we focus on five factors that strengthen or weaken interest group activity: size, unity, leadership, information and expertise, and money.

Size

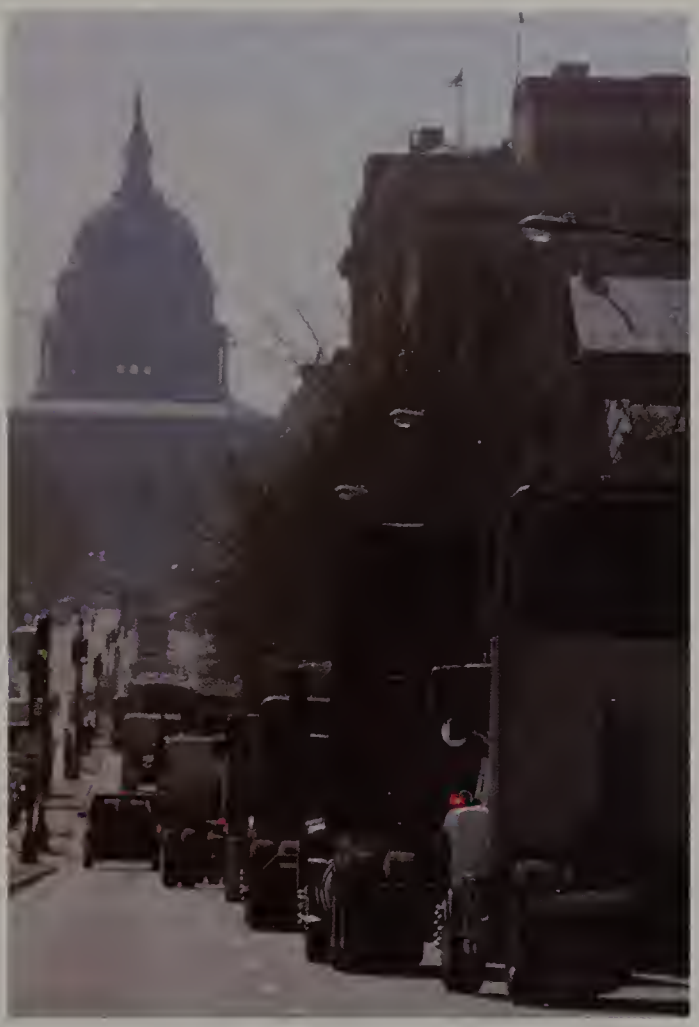
Size is a major factor affecting an interest group's power. Large organizations, such as the AFL-CIO or the U.S. Chamber of Commerce, have the potential to mobilize vast resources of money, information, time, and energy in the service of an issue. The success of unions' support of the minimum hourly wage is a measure of the importance of size as a component of political power. The success in the mid-1990s of the U.S. Chamber of Commerce's efforts in support of the North American Free Trade Agreement with Mexico and Canada is an indication of the political impact of the Chamber's membership and size.

CRITICAL THINKING

Is the membership size of an interest group always important in the group's attempts to influence the policymaking process?

The importance of membership size varies among interest groups. Corporate interest groups that are not membership organizations and trade associations, which generally have relatively few members, obviously need not pay much attention to membership size. On the other hand, unions and citizens' groups, which traditionally claim large memberships and mass representation, do place a high value on membership size.[12]

In evaluating the impact of size, the key word is *potential*. Many large interest groups have little or no influence over the political opinions and participation of their membership. Indeed, a large membership is often difficult both to manage



Truckers Protest

More than 200 independent truckers drove their big rigs to Capitol Hill on February 22, 2000, to protest diesel fuel prices and demand tax breaks to offset greatly increased operating costs.

and to influence.[13] But if the leaders of large interest groups such as the AFL-CIO or the U.S. Chamber of Commerce can convince elected officials, administrators, and congressional staff that they can mobilize their membership behind a policy, size becomes very important. Elected officials are often impressed and influenced by interest groups that have a large membership.

Unity

A group's power is also strongly affected by the unity of its members. In recent legislative battles to raise the federal minimum hourly wage, for example, the AFL-CIO was sure that its large membership was united. Such unity gave the AFL-CIO enormous strength. Congress, the president, and the bureaucracy cannot ignore the preferences of millions of organized individuals who are united by a common goal.

When an interest group lacks unity on an issue, its influence on the policymaking process drops considerably, even if the group is large. Internal

disagreements often work against a group's interests. For example, agreement is rare across the petroleum industry, where companies differ in size from giants such as Mobil/Exxon to the smaller, independent "wildcat" companies. One lobbyist for the American Petroleum Institute, a trade association representing oil interests, suggested that consensus on some issues was a "long time coming." When such consensus is lacking, the Institute often takes "no stand" at all, even if the issues affect its membership across the board.[14]

Leadership

Size and group unity do not necessarily ensure success, however. Interest groups must also have leaders who command respect and who can articulate and represent the issues and demands of the organization. Without such leadership, the interest group is "headless" and, more often than not, ineffective in pushing its goals.

One example of effective leadership is provided by Marian Wright Edelman, head of the Washington-based Children's Defense Fund, which lobbies on health and social service issues on behalf of children. Highly respected by many members of Congress, she and her organization have been highly effectual in supporting programs that have an impact on the lives of children.

Information and Expertise

What lobbyists know—their ability to collect information, evaluate its importance, and pass it on to appropriate government officials—is critical to their success. Faced with decisions on a variety of issues, public officials need credible and trustworthy information. Thus, an interest group that can present its expertise cogently and convincingly has a distinct advantage over less-informed and less-articulate organizations. Patrick Healy, who was powerful and successful as chief lobbyist for the National Milk Producers' Federation, argues that facts are the major resource of lobbying and that being able to provide accurate information to members and staff in Congress is the key to a lobbyist's success. Few of his colleagues would disagree with him.

The effectiveness of a group's expertise and delivery of information also depends on the perception of the group's motives. The American Medical Association's position on smoking is presumed to be economically disinterested and hence is heeded by Congress and the public. But its stand against national health insurance for all citizens is viewed with some skepticism, as it may stem from doctors' economic self-interest.

Money

Lobbying, collecting information, and other activities cost money. Besides the lobbyists' salaries, expenses include office space, support staff, telephones, office equipment, and travel. Some groups hire professional lobbying firms, and the

CLOSER TO HOME



Money, Money Everywhere? Interest Groups and PACs

Few political institutions have attracted as much interest and attention at the national level as have interest groups and their affiliated political action committees (PACs). As you learned in Chapter 7, PACs are independent organizations set up to collect campaign contributions from individuals who support the PAC's goals and to pass those contributions on to candidates. PACs resulted from changes in federal campaign finance laws that prevented interest groups from making direct contributions to federal campaigns from corporate or union treasuries but allowed those organizations to establish PACs to raise funds independently.

Ronald Hrebenar reminds us that the "big-money style of interest group politics is not found just in Washington but is increasingly prevalent at the state level." With statewide and legislative races increasing in cost, it is not surprising that candidates have increasingly sought contributions from statewide PACs for campaign funding. In California, for example, the average state legislative campaign costs well over $250,000, with races for the assembly or state senate in many competitive districts costing over a million dollars. In any given election year, there are also likely to be several initiatives on the California ballot, giving voters the opportunity to vote for or against various policy propositions. In reaction to one recent initiative dealing with controlling increases in automobile insurance, 250 insurance companies opposing the proposition raised over $43 million in contributions. With over $8.6 billion in automobile insurance premiums at stake, such efforts are not surprising.

The impact of PACs on legislative races varies among the states. In Kansas and Utah, incumbent candidates for the state legislature rely on PACs for over 60 percent of their funding. In Minnesota, incumbents receive only about 11 percent of their campaign financing from PACs.

The response to the increase in PACs at the state level has varied among the fifty states. New Jersey has strict regulations regarding the registration of PACs and their source of support. In Kentucky, a candidate cannot receive more than 35 percent of his or her campaign funds from a PAC, and total PAC contributions cannot exceed $5,000. While some states, including Arizona, Connecticut, North Dakota, Pennsylvania, and Texas, prohibit any direct contributions from corporations and unions, other states, such as Colorado, Illinois, Missouri, and Utah, allow unlimited contributions from PACs and interest groups to candidates running for statewide, legislative, or local offices.

The diversity of the fifty states is matched by the diversity in state laws governing the role of interest group and PAC contributions to both state and local candidates. Clearly, PACs have grown in importance closer to home, at the state and local level.

Source: Ronald J. Hrebenar, *Interest Group Politics in America*, 3rd ed. (Armonk, N.Y.: M. E. Sharpe, 1997), pp. 210–211; Ann O'M. Bowman and Richard C. Kearney, *State and Local Government: The Essentials* (Boston: Houghton Mifflin, 2000), pp. 102–103 and 107–108.

costs of these services can be significant. A large budget may not be the most critical resource of interest groups, but adequate funding is essential.

Fundraising tactics differ from group to group. Many citizen activist groups, such as the Sierra Club, rely on an annual membership fee. For these groups, finding enough members to maintain the organization can be a problem. A hiker or camper need not join the club in order to benefit from its achievements in improving environmental conditions and preserving national parks. To get around this problem of **free riders**—those who benefit from the actions of interest groups without spending time or money to aid them—groups may seek funding from foundations that favor an interest group's goals. Groups may also offer special services and resources to help recruit members.[15] They may provide members with free publications, technical journals, informative newsletters, reduced insurance rates, and even the opportunity to combine business with pleasure at annual meetings held in vacation resorts. For example, the American Association of Retired Persons provides its members with low-cost health insurance policies and a money market fund.[16] The members of the National Rifle Association can buy ammunition, handguns, and rifles at discount prices.

Free riders Those who benefit from the actions of interest groups without spending time or money to aid the groups.

Economic groups often have easier access to funds. Groups such as the U.S. Chamber of Commerce and the National Association of Manufacturers receive dues from their corporate and individual members. Many companies use corporate funds to cover the cost of maintaining a staff lobbyist or hiring a lobbying firm. Organizations that people must join in order to keep their jobs can certainly count on financial support from members. This is typical of many trade and industrial jobs and even some professions. Carpenters and plumbers must join their unions, and physicians, lawyers, and other professionals find themselves under pressure to join professional associations.

CRITICAL THINKING

Do interest groups lobby with hundred-dollar bills and wild parties?

Interest Group Tactics: You Don't Lobby with Hundred-Dollar Bills and Wild Parties

Interest groups are as powerful as their size, unity, leadership, expertise, and funds enable them to be. A group need not have all of these resources, but the more of them that it has, the better. Of course, no single resource can make or break a group. More often than not, success comes from effectively combining organizational resources and the tactics used to influence policymaking.

"You don't lobby with hundred-dollar bills and wild parties. You lobby with facts," says former lobbyist Patrick Healy. As you will see, however, money counts, although it is only one of many tools used by interest groups to influence government.

Lobbying

Lobbying The act of trying to influence government decision makers; it is named after the public rooms in which it first took place.

As you learned earlier in this chapter, **lobbying** is the act of trying to influence government decision makers. Named after the public rooms, lobbies, in which it first took place, lobbying now goes on in hearing rooms, offices, and restaurants—any spot where a lobbyist can gain a hearing and effectively present a case.

Lobbyists' stock in trade is their relationships with government officials and their staffs (see Table 8.1). These relationships are maintained not with bribes and favors, as the myth of corruption implies, but with data—technical information that members of Congress and bureaucrats need in order to carry out their committee and administrative assignments. Their work demands a level of expertise that few can muster, and so they come to depend on lobbyists' information and recommendations regarding the thousands of issues on which they must decide. Lobbyists even draft legislation, write speeches, and help plan legislative strategy. For most lobbyists, however, presenting research results or technical information to public officials is the most important and time-consuming part of their jobs.[17]

TABLE 8.1
What Lobbyists Do

Despite the myth of corrupting influence, lobbyists do not spend all of their time "endorsing candidates" or contributing to their campaigns. As these data demonstrate, disseminating information is a major focus of their work.

Type of Technique	Percentage of Organizations Using Technique	
	Regularly	Occasionally
Contacting Congress personally	96	4
Talking with the press	76	22
Testifying in Congress	70	30
Presenting research to government	68	32
Contacting agency personnel	67	33
Mobilizing group members	56	38
Contributing to campaigns	54	10
Presenting research to the press	49	49
Testifying at agency hearings	39	49
Participating in litigation over policy	22	51

Source: Ken Kollman, *Outside Lobbying: Public Opinion and Interest Group Strategies* (Princeton, N.J.: Princeton University Press, 1998, p. 35).

Once an interest group proves itself as a source of dependable information, it has easier access to officials. Lobbyists also share that expertise at congressional hearings, presenting research or technical information or discussing the impact of a bill on national, state, or local interests. Knowing how important constituents' concerns are to legislators, lobbyists are quick to point to the impact of a bill on a representative's home district or state. Whenever they can, interest groups mobilize the folks at home to write and call members of Congress to stress the importance of particular issues.

CRITICAL THINKING

Do interest group lobbyists operate outside the law?

Clearly, there are unethical lobbyists, and their existence supports the myth of corruption that many citizens believe. In the early years of the republic, presenting gifts to or bribing willing legislators was a not uncommon way of influencing the passage of a specific bill. Indeed, in 1833, as prominent a senator as Daniel Webster was on retainer to the Bank of the United States, which was fighting for its survival. Webster wrote to the bank president: "My retainer has not been renewed or refreshed as usual. If it is wished that my relation to the Bank should be continued, it may be well to send me the usual retainer."[18]

Despite their reputation for bribery and corruption, most interest groups today function within the law. Nevertheless, Congress has found it necessary from time to time to pass laws regulating the groups and their representatives. It was in 1887 that Congress first required lobbyists to register with the House of Representatives. Additional laws mandated that lobbyists file reports listing their clients, describing their activities, and recording the amount of money spent. Recent legislation, including the 1995 Lobbying Restrictions Act, have sought to effectively regulate lobbying in Washington, although there are still many loopholes in the law that prevent effective overall control over lobbying activities.[19]

CRITICAL THINKING

Are all lobbyists liars?

In their relations with government officials, lobbyists' actions are governed by one major rule: A lobbyist should never lie. This rule may seem strange or untrue to you, but it is the case. As one member of Congress put it, "It doesn't take very long to figure which lobbyists are straightforward, and which ones are trying to snow you. The good ones will give you the weak points as well as the strong points of their case. If anyone ever gives me false or misleading information, that's it—I'll never see him again."[20] When 175 lobbyists were asked which resources were most important to their success, an overwhelming majority singled out the reputation for being credible and trustworthy.[21]

Electioneering and Policymaking

Electioneering
Participating in the election process by providing services or raising campaign donations.

Participating in the election process—**electioneering**—is an important tactic of many interest groups. As part of that tactic, both interest groups and political action committees have become very important to candidates.

During the 2000 election cycle, PACs spent over $243 million in direct contributions and other costs related to Senate and House races. Few congressional candidates, incumbent or not, refuse PAC funding of their expensive campaigns. (See Table 8.2 for a list of major PAC contributors.)

TABLE 8.2

Top Fifteen PACs: Contributions to Congressional and Presidential Candidates

Rank	Name	Amount
1	Association of Trial Lawyers of America Political Action Committee	2,271,500
2	International Brotherhood of Electrical Workers Committee on Political Education	1,963,605
3	American Federation of State, County, and Municipal Employees—PEOPLE, Qualified	1,904,794
4	Democratic Republican Independent Voter Education	1,816,450
5	Realtors Political Action Committee	1,612,628
6	Machinists Non-partisan Political League	1,563,863
7	Dealers Election Action Committee of the National Automobile Dealers Association	1,473,450
8	Build Political Action Committee of the National Association of Home Builders	1,358,599
9	United Auto Workers—Voluntary Community Action Program	1,348,800
10	United Parcel Service Inc. Political Action Committee	1,276,420
11	National Beer Wholesalers' Association Political Action Committee	1,232,750
12	Service Employees International Union Political Campaign Committee	1,174,949
13	Carpenters Legislative Improvement Committee, United Brotherhood of Carpenters and Joiners of AME	1,163,500
14	United Transportation Union Political Education League	1,106,950
15	United Food and Commercial Workers, Active Ballot Club	1,092,048

Source: Federal Election Commission, 1/1/99 to 6/30/00.

PACs' patterns of giving reflect their partisan persuasions. In 2000, for example, labor-sponsored PACs, traditionally strong supporters of the Democratic party, channeled their contributions primarily to Democratic candidates. Corporate-sponsored PACs, on the other hand, directed much of their support to Republican candidates.

Do PAC contributions influence politicians' decisions? Do the recipients of campaign funds support the donors' programs? Apparently, interest groups think they do. In one study, 58 percent of interest group representatives said that they used campaign contributions as a means of influencing the policymaking process.[22] Despite that belief, there is limited evidence that campaign contributions guarantee support or votes on a bill.[23] In general, what a gift may ensure is easier access to elected officials or their staff. This is important in itself, for such access allows lobbyists to present and argue their positions and to influence the agenda of Congress. However, while the list of the top fifteen PAC contributors in 2000 in Table 8.2 is impressive, don't be misled. A majority of the almost 4,000

registered PACs in Washington donate little or nothing to political campaigns, keeping a safe arms-length from the financing of the campaign process.

While some studies claim that campaign contributions by PACs influence the policymaking process, other studies assert that there is no clear link between money and policymaking. Many legislators argue that PAC funds are not intended to buy congressional votes; rather, their purpose is to support legislators who are already committed to the PAC's positions. As Congressman Jack Fields said in responding to allegations of PAC influence through financial contributions, "I haven't changed my philosophy in the fifteen years I've been in Congress. My philosophy has always been free enterprise and to support whatever creates jobs, and those who want to contribute to me are free to do so."[24] Nevertheless, the 2000 presidential and congressional elections saw both record PAC contributions—over $220 million to federal campaigns—and a growing skepticism among citizens as to the role that money plays in the campaign and policymaking process.

According to the Federal Election Campaign Act, PACs can donate no more than $5,000 per candidate per election (primaries and general elections count as separate elections), a restriction motivated by a history of interest group contributions that sometimes reached tens of thousands of dollars for a single candidate. Because candidates must now seek out more contributors to their campaigns to ensure sufficient funding, a single group may have less influence on a candidate than it expects. However, the $5,000 per candidate restriction makes it possible for PACs to support more candidates, for the number of campaigns to which a PAC may contribute is unlimited. This outcome disturbs many reformers, who had hoped to restrict, not increase, the involvement of interest groups in campaigns.

Interest group activity in campaigns has given rise to other concerns as well. Interest groups (and individual contributors) have found a way to bypass the Federal Election Campaign Act's restrictions on PAC contributions in federal elections. PACs may contribute what is known as "soft money" to political parties, a subject we discussed in Chapter 7, on campaigns and elections. You may remember that these contributions, which are unlimited, may be used only for party-building activities, such as voter registration drives and get-out-the-vote efforts. There is a fine line, however, between these activities and political campaign endeavors. The 2000 presidential campaigns continued to raise serious questions as to how soft-money contributions had been collected and distributed by both parties. As a scholar who has studied interest groups, Jeffrey Berry, has pointed out, "Expanding the role of interest groups in campaign finance has not . . . restored public confidence in the integrity of the political process. Rather, it has heightened concern about the role of interest groups in a democracy."[25]

Interest groups support campaigns in other ways besides PAC contributions. Labor, trade, and professional associations supply candidates with volunteers and offer public endorsements. The AFL-CIO, the Americans for Democratic Action, and the American Conservative Union are just three of the many interest groups and PACs that provide their members and the public with voting

scorecards on candidates they support or target for defeat. By listing key votes, the cards can praise or damn the candidate. The National Congressional Club PAC specializes in the so-called negative campaign, or putting down the opposition. This group has spent large sums in the past, particularly on television advertisements, in an effort to defeat liberal candidates. In turn, the AFL-CIO has financed expensive television advertising campaigns that have both directly and indirectly supported Democratic candidates for Congress.

Interest groups do not limit their activities to congressional races. Besides pressuring the major parties to include the interest group's goals in the presidential party platforms, a group may turn out in force at the national conventions. Of the 4,339 delegates at the 2000 Democratic National Convention, 31 percent were members of labor unions, including strong representation from teacher unions. Not surprisingly, the party took strong platform positions on education and labor concerns. The pro-business, anti-regulation platform of the Republican party was no doubt influenced, in part, by the strong representation of pro-business delegates at the 2000 Republican National Convention.

Building Coalitions

Coalition building The bringing together of diverse interest groups in a common lobbying effort.

An interest group tactic that has gained increasing importance is **coalition building**—the bringing together of diverse interest groups in a common lobbying effort. This is what occurred in 2000 when a coalition of organizations including the National Association of Manufacturers, the U.S. Chamber of Commerce, and the National Federation of Independent Businesses sought to block a regulation "that would allow states to use unemployment insurance taxes . . . to finance paid leaves for parents with a new child."[26] In turn, a coalition of organizations supporting the proposed regulation was soon organized by National Partnership for Women & Families.

Most signs point to increasing use of coalition building by interest groups and PACs in an effort to influence the policymaking process.

Grassroots Pressure: Power to the People

Grassroots pressure Lobbying by rank-and-file members of an interest group who use such tactics as letter writing and public protests to influence government.

The word *grassroots* is a people-centered term. In interest group politics, **grassroots pressure** refers to lobbying by rank-and-file members of an interest group—often just ordinary citizens—who use such tactics as letter writing and public protests to influence government.

When the National Beer Wholesalers Association wanted to be exempted from antitrust legislation, it mobilized grassroots support for a massive letter, telephone, and telegram campaign. Truly a "bottoms-up" effort to stimulate pressure from the grassroots level, the campaign was supported by political contributions from the association's political action committee—which, as you have no doubt guessed, is called SIXPAC.[27]

Grassroots activity includes face-to-face meetings between members of Congress and selected constituents, as well as demonstrations and protests. During a recent debate in Congress over a national health care program, the tobacco industry mobilized thousands of tobacco growers and workers to come to Washington to lobby against a proposed cigarette tax increase to fund the program. That attempt to put a human face on the industry and remind members of Congress of the large number of people employed in the tobacco industry had the effect of significantly reducing the proposed size of the cigarette tax.[28] When interest groups mobilize grassroots mail and telephone campaigns, they tend to focus on narrow issues and to direct their efforts toward specific members of Congress. On any given issue, "lobbyists understand intuitively what political scientists have demonstrated empirically: members of Congress are more influenced by their constituents than by Washington lobbies."[29] For that reason, many interest groups stress grassroots efforts.

Indeed, grassroots mobilization has evolved into a highly professional undertaking. *Campaigns and Elections* magazine has estimated that "professional grassroots lobbying has become an $800 million industry. . . . The planned orchestrated demonstration of public support through the mobilization of constituent action is . . . one of the hottest trends in politics today. . . . Interest groups that don't play the game risk becoming political eunuchs."[30] An interest group representative may call members of the public and solicit their opinion on a topic; and if their opinion coincides with the position of the interest group, the individuals are offered an immediate and direct telephone hookup with their members of Congress. In this way, interest groups try to ensure that grassroots opinions favorable to them reach the appropriate legislators. As *Washington Post* correspondents Haynes Johnson and David Broder point out, "there's nothing spontaneous about this kind of operation." It has been called "astroturfing"—a reference to the synthetic grass used on many football, soccer, and baseball fields.[31] Unlike spontaneous grassroots activity generated by citizens concerned about an issue, astroturfing is "public opinion" systematically organized and generated by an interest group.

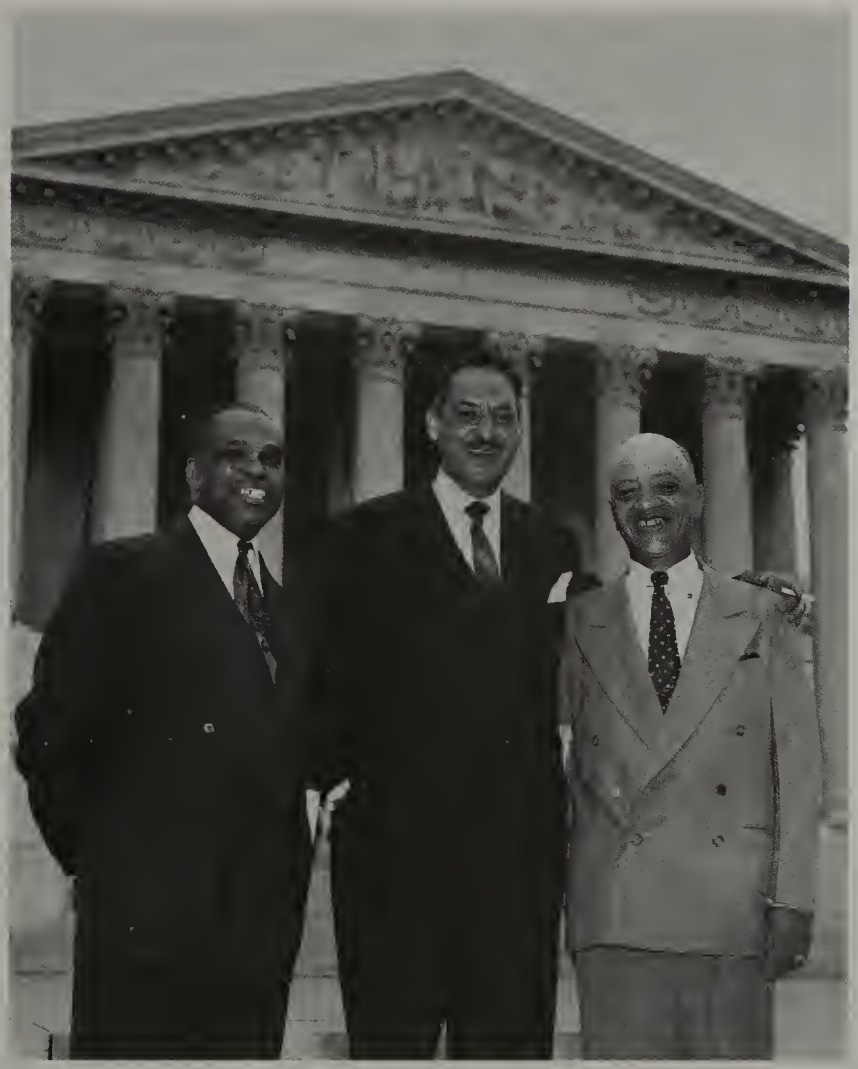
Litigation

Many pressure groups, particularly public interest and advocacy groups, also use the courts to influence policy. They bring direct suit, challenge existing laws, or file briefs as "friends of the court" to support one side in cases already before the court.

Though it is expensive and time consuming, litigation can bring about remarkable political change. Perhaps the outstanding example is the use of the courts by the National Association for the Advancement of Colored People (NAACP) in the 1940s and 1950s. In a series of cases, culminating in the *Brown* v. *Board of Education* decision in 1954, NAACP lawyers argued and the Supreme Court affirmed that school segregation was illegal in the United States. Women's groups, consumer

Litigation

Many interest groups use the court system and the litigation process to advocate for their policy positions. One public advocacy group, the National Association for the Advancement of Colored People (NAACP), successfully argued before the Supreme Court in 1954 that school segregation should be illegal and unconstitutional in the United States. Thurgood Marshall (center) argued the case for the NAACP. Marshall would later be appointed by President Lyndon Johnson as the first black to serve on the U.S. Supreme Court.



groups, environmental groups, religious groups, and others have followed the lead of the civil rights movement in taking their causes to the courts. Corporations and trade associations have also engaged in litigation. However, the high cost restrains many groups. One interest group, the Women's Equity League, could not appeal a court ruling against it in an important case because it could not afford the $40,000 necessary to pay for copies of the trial transcript.[32]

In another approach, groups try to influence the philosophy of the Supreme Court by opposing or supporting judicial nominees. In 1991, President George Bush's nominee to the Supreme Court, Clarence Thomas, was strongly opposed by liberal groups, such as the National Abortion Rights Action League and People for the American Way, because of Thomas's conservative stand on many issues. Other organizations opposed Thomas because of questions raised by sexual harassment charges made against him by a former employee. A number of conservative groups supporting Thomas countered with campaigns urging Thomas's confirmation, and indeed the Senate eventually confirmed him.

MYTHS IN POPULAR CULTURE

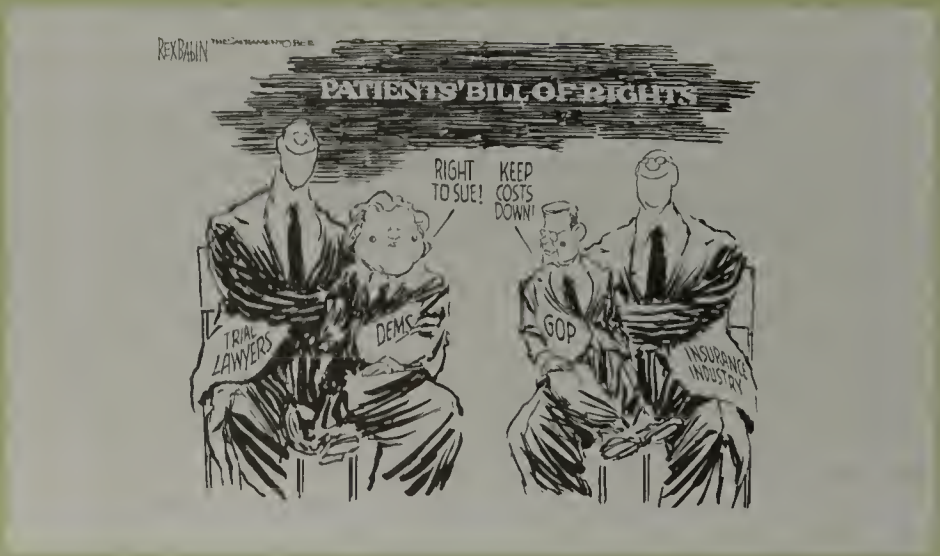
Selling Out to the Special Interests

If you wanted to dramatize the corruption of politicians and interest groups, you couldn't do a better job than that done by Rex Babin, an award-winning editorial cartoonist for the *Sacramento Bee* newspaper. (See our discussion of political cartoons in the Myths in Popular Culture box in Chapter 6, p. 162.) Focusing on efforts by the federal and state governments to provide citizens with good health care and the right to sue health insurance companies, the cartoon portrays the Democrats as "dummies" of the trial lawyers (who receive legal fees from patients litigating cases against insurance companies, HMOs, doctors, and hospitals), and the Republicans as "dummies" of the insurance companies (who want to limit a patient's right to healthcare litigation in order to protect their profits).

The editorial cartoon remains one of the most creative instruments in popular culture for satirizing politics and government. In this cartoon, not only elected officials but also special-interest groups are the target of Babin's satire. Members of Congress are depicted as tools of special-interest groups, who, the cartoon implies, no doubt reward them with campaign contributions come election time.

As with all myths about politics, there are some strains of truth in this cartoon's portrayal. In reality, many Democrats are closely aligned with the various trial lawyer associations on the patients' bill of right issue, and many Republicans are aligned with the insurance companies. But creative and gifted though Rex Babin is, he goes too far in his portrayal.

Lobbyists cannot buy the policy support of most members of Congress or state and local legislators. Policymaking is a complex process, affected not only by the influence of interest groups but also by the interests of the representatives' constituents and those representatives' principles, values, and policy preferences. That interest groups can and do influence the policymaking process, sometimes detrimentally, is indeed true. That they are a constant and overwhelming force of corruption in the policymaking process is a myth generated and reinforced by cartoons like the one reprinted here.



Hard-line Tactics

In recent years, a number of interest groups have used hard-line tactics, including civil disobedience and illegal action, to further their cause. In the 1980s and 1990s, groups like ACT UP drew public attention to the plight of AIDS victims by disrupting public events, and organizations like Operation Rescue received a great deal of attention because they advocated illegally blocking access to abortion clinics. On February 22, 2000, discontented independent truck drivers, angry about increasing diesel fuel prices and demanding that the federal government legislate tax breaks to offset growing operating costs, created major traffic jams in Washington, D.C., during a "truck march" on the Capitol. Hard-line tactics appear to be a growing mechanism for presenting an interest group's cause.

CRITICAL THINKING

Do interest groups distort the democratic representative process?

Interest Groups and Democracy

Interest groups pose a number of problems for a democratic society. James Madison argued in the "Federalist No. 10" that the rise of factions is inevitable in a democracy. Although he believed that factions could destroy the policy-making process, he did not want to prohibit them, for that would undermine the basic tenets of a participatory republic. Instead, Madison hoped that the divisiveness of factions would be tempered both by built-in checks and balances and by a political system that would ensure the creation of competing factions.

Interest groups do, to some degree, distort the democratic process, mainly because their membership is clearly biased toward the upper half of the socioeconomic ladder. To the extent that the business, labor, and professional groups have exceptional influence, policy is distorted.

However, many groups, including the advocate public interest groups that we discussed earlier in this chapter, seek to help and represent less affluent and underserved citizens, including the homeless and the poor. While the distribution of representation by interest groups in the United States remains distorted, with the advantaged better represented than the disadvantaged, there is reason to believe that the public increasingly recognizes the need for broad representation in a society based on strong interest group representation.

CRITICAL THINKING

Are all interest groups corrupt and self-serving?

Conclusion: Corrupt or Constructive?

Unquestionably, interest groups have come to wield increasing political power, and Americans' fear of these groups as a corrupting influence in politics has some basis in reality. With large treasuries to disburse and an inside track with public officials, they are potentially a distorting influence on the functioning of

the political system. Broad national interests can be lost in the clamor of pressure-group activity and narrow self-interests. Interest groups also work out of public view, thus encouraging the popular belief that the public cannot adequately scrutinize their activities.

Not every group with a shared interest is self-interested, however. Like the proverbial concept of beauty, an interest group's "goodness" or "badness" is often in the eye of the beholder. To see only the biasing effects of interest groups is to perpetuate the myth of corrupting influence. Interest groups are also a healthy feature of and a positive force in the political process. They are organizations that give voice to the voiceless and represent the unrepresented. Advances for many minority groups, for the poor, the young, the aged, and others who are disadvantaged, and for farmers, laborers, and owners of small businesses can be attributed, in part, to the effective activities of interest groups. Increasing numbers of interest groups support and fight for programs that benefit and contribute to our democratic process. They serve to supplement our representative body of elected officials by giving citizens an additional voice in government.

Few, if any, citizens are not represented directly or indirectly by an interest group, whether that group is concerned with economic, social, or environmental issues.

Madison appropriately warned of the pitfalls of interest groups. He also argued that they are inevitable in any democratic system. We argue that the groups link citizens and public officials through corporate, labor, trade, and professional associations and through citizen activist groups. Such linkage may be worth the price of real (and imagined) distortions that inevitably occur when interest groups are active in the policymaking process. Certainly, the groups are too useful to dismiss by invoking the myth of corrupting influence.

Summary

1. Interest groups are organized groups of individuals who share one or more common goals and who seek to influence government decision making.
2. Political parties deal with both specific and general policy development. Interest groups usually focus on narrow policy areas.
3. Although they may attempt to influence the outcome of certain elections, interest groups do not run candidates for elective office, their names do not appear on the ballot, and they do not attempt to control or operate government.
4. Types of interest groups include economic interest organizations, citizen activist groups, and government-related interest groups.
5. A lobbyist is an individual who works for a specific interest group or who serves as the spokesperson for a specific set of interests. Lobbyists engage in the act of lobbying—that is, they try to influence government decision making by persuading legislators and members of the executive branch to support certain policies or legislation.

6. Political action committees (PACs), cousin organizations of interest groups, serve as affiliated or independent organizations with the prime function of collecting and disbursing campaign contributions. Candidates, particularly for Congress, have become increasingly dependent on this source of campaign support.

7. Interest groups rely on resources from within their groups to strengthen their roles in the policymaking process. These resources include strength in numbers, group cohesion, strong leadership, information and expertise, and money. In general, however, given different issues and different political environments, no single resource determines the success of an interest group. A group's influence is usually strongest when a combination of organizational resources is brought to bear on the policy-making process.

8. Interest group tactics include the use of pressure from the grassroots as well as lobbying, electioneering (which includes financing and supporting campaigns through affiliated PACs), coalition building, and litigating.

9. Interest groups can pose problems for a democratic society because they often represent narrow interests that are biased toward the higher economic groups.

10. Interest groups are important to the political process because they can and do enhance our representative process, focusing our attention on important issues.



Net Work

Interest groups come in all shapes and sizes, representing advocacy groups on hundreds of different issues. Two general interest group links with an ideological perspective are Turn Left (**http://www.turnleft.com**) and ConservativeNet (**http://www.conservativenet.com**).

Visit the web sites for Turn Left and ConservativeNet and find out how these two sites represent liberal and conservative interests in the United States.

Other interest group sites dealing with specific issue areas that you may want to explore include

- Abortion issue:

  National Right to Life Committee:
  http://www.nrlc.org

  National Abortion and Reproductive Rights Action League:
  http://www.naral.org

- Environmental issues:

  The Sierra Club:
  http://www.sierraclub.org

  The Environmental Defense Fund:
  http://www.edf.org

- Gun Control:

  Center to Prevent Handgun Violence:
  http://www.handguncontrol.org

  National Rifle Association:
  http://www.nra.org

- Women's Issues:

  The Eagle Forum: **http://www.eagleforum.org**

  National Organization for Women:
  http://www.now.org

How are the positions of the two interest groups on any of the topics listed above the same or different from each other? What are the merits of the opposing arguments?

CHAPTER 9

Media and Politics

- The Rise of the Media

The Early Days: The political and the yellow press
The Broadcast Media: Entertainment, then the news
Diversity and Concentration: Concentrated ownership and the Internet challenge
Government Regulation: Government licensing, equal time

- What Is News?
- The Effects of the Mass Media

Setting the Agenda: The main media effect
Conducting Politics in the Media Old and New: Pseudo-events, the new media, and "horse races"

- The Uneasy Alliance Between Government and the Media

Covering the President: Press conferences and leaks
Covering Congress: Diffusion, not inattention
Covering the Courts: The least-covered branch

- Conclusion: The Great Manipulator?

MYTH & REALITY

Do the media have the power to influence public opinion?

MYTH & REALITY

Shortly after midnight on January 17, 1998, Matt Drudge, in his one-man Internet news and gossip agency called the Drudge Report, posted a story that shook American politics. Drudge's posting charged that *Newsweek* had killed a story accusing President William Clinton of having had an affair with White House intern Monica Lewinsky. Within a few hours of the posting, the Drudge story had become grist for the Sunday morning talk shows, and it was soon repeated throughout the media.

As it turned out, the Drudge account was essentially true, although several specifics were wrong. And it prompted an immediate attack not just on the president, but on the media. For its part, the White House responded with accusations that the media had cooperated with what they called a vast conservative conspiracy to destroy the administration. On the other hand, many of the president's detractors charged that *Newsweek*'s failure to publish the story was proof that the liberal media were unwilling to criticize President Clinton.

In their criticisms of the media, both sides in the dispute implicitly acknowledged that in many ways the press has come to play a crucial role in American politics. But in what ways? In part, the popular view of the power of the media rests on the *myth of media manipulation:* that television, radio, and the print media dominate and direct the public's thinking about politics. The myth of media manipulation is not confined to any particular group in society; it is shared by Americans of widely varying political perspectives. Conservatives worry about the effects on the public of what they see as a liberal conspiracy, and liberals often describe the media as a capitalist plot serving the interests of the wealthy. In their own defense, journalists say they are simply reflecting the world as it is—serving as a mirror to society. They just cover the story. Thus Roan Conrad, political editor for NBC News, argued over two decades ago that "the news is what happens. . . . The news is not a reporter's perception or explanation of what happens; it is simply what happens."[1]

As you will see in this chapter, although the choice of stories does much to define public concerns, the relationship between the media and public opinion is not as straightforward as the myth suggests. The media cannot dictate the political beliefs of the country. At the same time, journalists are not simply passive instruments through which events, called news, are transmitted. Interestingly, the standards by which journalists decide what is newsworthy often work to the advantage of officials and candidates who know how to use the media to achieve policy and electoral goals.

The Rise of the Media

Americans buy nearly 60 million newspapers and keep their television sets on an average of more than six hours each day. They can choose among ten thousand or so weekly and monthly periodicals, and there are almost nine thousand radio

stations in the country. Moreover, the growth of the Internet is opening up an uncountable number of media sources for those who have access. The attentive media watcher faces an incessant flow of information on topics ranging from foreign affairs to domestic scandals. Yet it has not always been this way. A mere 170 years ago news from Washington or the state capital arrived, if at all, days, weeks, or even months after the events occurred.

The Early Days

Before 1830, the American press consisted of specialized publications designed to reach elite audiences. Many papers were simply organs of political parties or individual candidates. Appearing once or twice a week, these partisan papers rallied the party faithful and denounced political opponents, often through vicious personal attacks. The only alternative sources of news were commercial papers, which appealed to merchants and traders. The commercial papers provided extensive accounts of business activities, such as shipping dates, commodity prices, and business transactions, but they were short on politics and made no attempt to reach a wide audience.

With the publication in 1833 of the *New York Sun,* American publishing entered the age of mass journalism. Capitalizing on technological advances that made printing relatively fast and cheap, the *Sun* was the first paper to appeal successfully to the public at large. It was sold on street corners for a penny a copy,

Read All About It

The modern mass media were born in America with the creation of the penny press. Sold on street corners by young boys and girls, like those pictured here, the penny press specialized in sensationalism.



Penny press The term for the first generation of newspapers with mass popular appeal. The name comes from the *New York Sun,* which was sold for a penny a copy in the mid-1800s.

Yellow journalism A type of journalism that flourished in the late nineteenth century and whose popularity was based on sensationalized stories of scandal and corruption.

and it and its many imitators (together they became known as the **penny press**) cultivated readerships in the thousands. A breezy style and an emphasis on local news, especially scandalous events, ensured the papers' popularity. Each vied fiercely with the others to produce the most sensational stories. At one point the staff of the *Sun* came up with a hoax about life on the moon.[2]

Toward the end of the nineteenth century, the emphasis on sensationalism became even more pronounced. Joseph Pulitzer, a crusading spirit who owned the *New York World,* and William Randolph Hearst, owner of the *New York Journal,* created **yellow journalism**—named for the "Yellow Kid" comic strip that first appeared in the *World* and then in the *Journal.* Yellow journalism utilized large, bold headlines, illustrations, cartoons, and color features to promote its tales of scandal and corruption. Not content with reporting the news, both Pulitzer and Hearst often made news by committing the considerable resources of their papers to various political causes. For instance, Hearst is usually credited with arousing in the American public the strong anti-Spanish feelings that led to the Spanish-American War. Just before the war, Hearst sent an artist to Cuba to cover the conflict between Spain and Cuba. When the artist wired that war did not seem likely, Hearst replied, "Please remain. You furnish the pictures. I will furnish the war."[3] Many people believe that he did just that.

CRITICAL THINKING

Is "yellow journalism" making a comeback?

While Hearst and Pulitzer inflamed public opinion with their sensational appeals, a new style of journalism was developing. A conservative paper, the *New York Times,* attacked the excesses of yellow journalism as indecent and stressed objectivity in its reporting. Newspapers, according to Adolph Ochs, owner of the *Times,* had the responsibility to "give news impartially, without fear or favor, regardless of any party, sect or interest involved."[4] Although its circulation was small compared with that of the yellow press, the *Times* became a standard by which journalism was judged, and objectivity became the goal of serious journalists. As any trip to the supermarket will show, however, yellow journalism did not die; it just became less mainstream.

The Broadcast Media

Even as newspapers were undergoing change, the technology of the broadcast media was being developed. The first regularly scheduled radio station, KDKA in Pittsburgh, began operation in 1920. Its owner, Westinghouse, the nation's leading manufacturer of home receivers, initially viewed it as a means of creating a market for its products. Most of the early radio stations were owned by non-profit institutions and were seen as public service entities designed to educate citizens for life in a democratic culture. In 1928, however, the newly created Federal Radio Commission (the predecessor to the Federal Communications Commission) reallocated frequency assignments in a way that greatly favored commercial owners. Indeed, the commission reasoned that nonprofit owners would not act in the public interest because they were not motivated by profits. Nonprofit stations quickly disappeared, to be replaced by commercial

broadcasters that linked advertising to immensely popular and profitable entertainment programs.

CRITICAL THINKING

Is news and public affairs programming compatible with for profit media ownership?

Although broadcasters stressed entertainment, government leaders were quick to grasp the political potential of radio. During the Great Depression, President Franklin D. Roosevelt employed the medium skillfully to deliver his famous fireside chats. Speaking in a warm and informal manner, Roosevelt sought to reassure his millions of listeners by making his broadcasts sound like friendly discussions. Roosevelt demonstrated the vast possibilities of radio, as well as its potential for overt manipulation. During the 1944 election, for instance, Roosevelt learned that his opponent, Thomas Dewey, had purchased airtime immediately following his own. Although scheduled to speak for fifteen minutes, Roosevelt stopped after fourteen. Millions of puzzled listeners turned their dials away from the silence and missed Dewey's address.

Despite the interest shown by political leaders, most broadcasters resisted programming news shows until the fledgling CBS network entered the business. Its owner, William Paley, saw news as a cheap source of programming and a means of competing with NBC, the more established radio network. His team of journalists, including Edward R. Murrow and Eric Sevareid, quickly established a reputation for superior news coverage. Murrow's broadcasts from London during World War II captured the imagination of the entire country, making Murrow a national celebrity.

Like radio, television was from the beginning a commercial venture that stressed entertainment and advertising. (Appropriately, Philo T. Farnsworth, the inventor of television, used a dollar sign as his first test pattern.) Throughout the 1950s, each of the three television networks—CBS, NBC, and ABC—provided one 15-minute news program five evenings a week. Even CBS, which had pioneered radio news, was reluctant to use valuable airtime for news and public affairs, preferring the popular and extraordinarily profitable quiz shows.

The situation changed in 1960, however, when all three networks televised the debates between presidential candidates John F. Kennedy and Richard M. Nixon. Although there is still disagreement over which candidate won, the debates definitely demonstrated the commercial potential of news and public affairs programming by drawing an audience of 60 to 75 million viewers. News programs ceased to be viewed simply as a means of improving a network's public image. Instead, the networks began competing to produce the most highly rated news programs, using such advanced technology as small hand-held cameras, wireless microphones, and satellite transmissions. As news coverage broadened, the audiences grew into the millions, and a majority of Americans came to depend on television as their prime source of news. Moreover, for the majority of Americans, television is the most believable source of news.[5]

Diversity and Concentration

Although the media present a staggering array of choices, merely reciting the number of outlets can be deceiving. The real issue, say media critics, is the

CLOSER TO HOME



If It Bleeds, It Leads

With their extravagantly paid anchors, armies of celebrated reporters, and sizable bureaus around the world, network news organizations are the embodiment of television journalism. Despite a declining audience for news programming, especially among the young, the major networks still draw millions of viewers each evening. Often overlooked, however, are the more than eleven hundred local commercial television stations around the nation. Less celebrated for their journalistic endeavors, the local stations nevertheless draw an even larger share of the audience for news than their national counterparts. Far from being a journalistic backwater, local newscasting is a highly competitive industry, producing abundant profits for station owners. Indeed, at some stations revenues from local news bring profit margins as high as 50 percent.

Not surprisingly, given the profitability of news, local stations continue to extend their news programming. Since the early 1960s, the major networks' nightly news broadcasts have been limited to one 30-minute program each evening. (Network executives have tried several times to expand to a 60-minute program, but their affiliate stations have always blocked these efforts.) Local stations, on the other hand, keep increasing the time devoted to newscasts. For several years local newscasts were 30-minute programs, designed to lead into prime time entertainment shows. Now 60- and even 90-minute news programs preceding prime time are common, and the stations usually also offer 30 minutes of late evening news. One Los Angeles station provides three hours of news programming, from 8:00 P.M. to 11:00 P.M., five nights a week.

Many local stations have also begun to compete directly with the national broadcasters by independently reporting on national and international affairs. Stations in larger markets have developed their own bureaus in Washington and elsewhere; those in smaller cities often supplement their resources with video wire services such as CONUS (standing for continental United States), which can, at little cost, provide live coverage of national issues specifically tailored to a subscribing station.

Of course, matters close to home are the bread and butter of the local stations. Most of their newscasts consist of weather forecasts, sports news, entertainment features, and human interest stories—all interspersed with cheerful banter among the reporters and promotions for upcoming stories. Consequently, very little time is left for public affairs programming. Moreover, as media critics point out, when public affairs issues are covered, they mostly have to do with crime, accidents, and fires—stories that often provide good visuals and feature ordinary people as helpless victims. These stories of individuals as victims are given less airtime than the weather and sports, but they tend to cluster in the first third of the newscast. Crimes, accidents, and fires are so likely to start off the program that some wags claim that in local broadcasting, "If it bleeds, it leads."

Sources: Stephen Ansolabehere, Roy Behr, and Shanto Iyengar, *The Media Game: American Politics in the Television Age* (New York: Macmillan, 1993); and Gerald Stone and Dwight Jensen, "Local TV News and the Good Bad Dyad," *Journalism Quarterly*, 64 (Spring 1987), 3–44.

increasing concentration of ownership in a few hands—a change that threatens to limit diversity of expression. About two-fifths of all daily newspapers published in the United States belong to the twelve largest chains. The largest of all, Gannett, owns approximately seventy-five newspapers, including *USA Today.* (Gannett also owns television stations.) Furthermore, even though the number of newspapers has stayed about the same in recent years, newspaper competition has decreased markedly. Only 2 percent of American cities have more than one newspaper.[6]

Concentrated ownership and influence are even greater in the television markets. About 85 percent of the nation's commercial television stations are affiliated with ABC, CBS, or NBC.[7] All three major networks, in turn, are owned by large conglomerates with multiple media interests that combine publishing, broadcasting, and Hollywood production studios.

All is not well for the networks, however. The rise of the Fox network and, more importantly, the growth of cable television have substantially eroded network dominance. Since 1980 the networks have lost more than a quarter of their prime-time audience to these new competitors. Cable television, which began as a means of bringing over-the-air broadcasts to remote communities, has been particularly aggressive at drawing a share of the audience away from the networks. In 1980 only about 10 percent of American homes were served by cable, but that number now stands at more than 55 percent.[8] As the audience for cable has grown, so has the range of offerings. Although cable systems still carry local network affiliates, they also offer a variety of channels and cable-based networks, such as Turner Broadcasting, Music Television (MTV), and Home Shopping Network.

News and public affairs programs are also supplied by cable operators through C-SPAN and the more widely watched Cable News Network (CNN), which offers 24-hour-a-day news broadcasts worldwide. (More than 75 million households currently receive CNN, 17 million of these outside the United States.)

The enormous growth of cable, direct satellite transmission, and a host of developing technologies that combine video and computer processing with microwave transmissions suggest a future of almost infinite choices. But who will control these outlets? Many observers believe that the technological revolution is destroying the centralized and concentrated media, which are exemplified by the major networks, and paving the way for a more democratic means of information production.[9] Others, however, expect the future to be much like the past, with major corporations becoming multimedia giants that will control the worldwide production, distribution, and technology of the new media. This future, many claim, can be seen by looking at Time Warner, which, among its many holdings, owns in whole or in part Turner Broadcasting, CNN, Warner Brothers Motion Pictures, HBO, Cinemax, Comedy Central, eight book publishers, twenty-four magazines, the multimedia CNN Interactive (web site), and cable franchises serving more than 11 million subscribers.



CRITICAL THINKING

What will happen to the Internet if the media conglomerates come to dominate it?

During the last few years, a new medium, the Internet and the World Wide Web, has grown to challenge the old alignment of media sources. Many Internet enthusiasts assume that as the technology goes digital, the ability of users to produce high-quality programming at minimal cost will simply overwhelm the current media. Thus John Perry Barlow dismisses the rise of huge entertainment conglomerates like Disney and Time Warner, arguing that they are "merely rearranging deck chairs on the *Titanic*."[10] Certainly the Internet is a revolutionary technology with unparalleled potential, but its potential has not been lost on media owners. Increasingly, a key component of media conglomerates is the ability to provide content for the World Wide Web. Disney already owns a substantial interest in the popular Infoseek, and America Online (AOL) and Time Warner have entered into a merger agreement whereby Time Warner, which already owns a substantial interest in the Internet access service Road Runner, will provide content for the giant portal. At this point it is simply too early to tell whether the Internet will challenge current media or simply become an arm of the media conglomerates. What is clear, however, is that the Internet is a target of media owners, who are working to integrate it with their other holdings.

Government Regulation

The American mass media are freer of government restrictions than those in any other nation. Nevertheless, the government exercises some control, especially over radio and television. In the case of printed materials, regulation applies only to obscenity and libel (see Chapter 4, on rights and liberties).

Government Licensing. Because of the limited number of frequencies over which radio and television signals can be transmitted, Congress created the Federal Communications Commission (FCC) in 1934 to monitor and regulate the use of the airwaves. Besides assigning frequencies so that stations' signals do not interfere with each other, the FCC issues licenses, which must be renewed every five years for television and every seven years for radio. According to statute, license renewals depend on "satisfactory performance" that "serve[s] the public interest, convenience, and necessity." The vagueness of that mandate gives the FCC tremendous discretion in awarding or denying license renewals, but as a matter of practice it has denied few applications and has exercised little control over broadcasting content. Illustrative of the FCC position is its refusal, in the face of heavy lobbying by advocacy groups, to require television broadcasters to limit early evening hours to family programming, accepting instead a rating system created and managed by the networks.

Equal-time rule A Federal Communications Commission rule that requires a broadcaster who permits one candidate to campaign on the station to provide all other candidates for the same office with equal time at identical rates.

Equal Time. The most significant FCC requirement is the **equal-time rule.** This provision stipulates that broadcasters who permit a candidate for political office to campaign on the station (including through paid advertisements) must allow all other candidates for the same office equal time at identical rates. Recently, industry leaders and others have argued for the relaxation or elimination of this rule because the increased competition among the numerous radio and television stations ensures access for all points of view. Indeed, critics of the rule note that electronic media are far more competitive than newspapers. Very few cities in the United States are served by more than one newspaper, but most citizens have several choices among stations, especially since the introduction of cable television. Although the Reagan administration supported this argument for deregulation, Congress has not significantly altered the equal-time rule.

What Is News?

Prominently displayed on the front page of the *New York Times* is the company motto: "All the News That's Fit to Print." Admirable as this sentiment may be, it is not, nor can it be, true. Indeed, a more accurate rephrasing of the motto might be "all the news that fits." The view that the news is simply what happens is unrealistic. No form of mass media can carry every newsworthy event; all are constrained by costs and availability of space and time. For instance, the average daily newspaper fills approximately 62 percent of its space with advertising, leaving a mere 38 percent (called the news hole) to be shared by news accounts, human interest stories, and pure entertainment features.

Network television news is even more limited. Each half-hour program contains only 22 minutes of news and human interest stories. The news is not simply what happens out there; it must be picked from a multitude of events, only a few

of which will be covered. What, then, is news? Perhaps the best explanation is that "news is what reporters, editors, and producers decide is news."[11]

Although the basis of news judgment often seems vague and unarticulated, it is possible to identify criteria most often used in selecting stories.[12]

- Newsworthy stories must be *timely and novel.* They must be what reporters call breaking stories. The routine is considered unworthy of coverage, even though it may have a significant impact on people's lives. As a former editor of the *New York Sun* put it, "When a dog bites a man, that is not news, because it happens so often. But if a man bites a dog, that is news."

CRITICAL THINKING

What are the consequences of defining news as conflict?

- Newsworthiness is heightened by *the presence of violence, conflict, disaster, or scandal.* Violent crime, for example, was a staple of the penny press and continues to dominate contemporary news. Even nonviolent conflict makes news. Larry Speakes, deputy press secretary during the Reagan administration, once noted that no one pays attention when one hundred members of Congress come out of a White House meeting and say that the president's program is great. "But if one says it stinks, that's news."
- *Familiarity* is also an important element of newsworthiness. Events are more likely to be covered if they involve individuals whom the public already knows. Approximately 85 percent of the domestic news stories covered by television and news magazines involve well-known people—mostly those holding official positions.[13] Unknown people are most newsworthy as victims of crime or natural disasters.

To the above list might be added the availability of individuals for interviews. Reporters rely heavily on interviews rather than printed documents. This dependence on the interview results partly from the need to personalize the news. Interviews with adversaries also increase the sense of conflict, adding a dramatic element to the narrative while preserving the reporter's image of objectivity by presenting the story in the familiar point-counterpoint format. Whatever the cause, the result is a bias in favor of those who are willing and able to provide the pithy comment.

CRITICAL THINKING

Has the growth of news programming improved the quality of reporting?

These criteria mainly stress ways of keeping the audience interested. Because media outlets make their profit from selling their audience to advertisers, they must keep their ratings or circulations high. Indeed, cynics often claim that news is "that which is printed on the back of advertisements."[14] Ironically, with the growth of cable and the Internet, the fierce competition produced by the proliferation of 24-hour news programming has led to a relaxation of the standards for determining what constitutes news. Fearing that they will miss the big story, mainstream journalists increasingly report unchecked stories of scandal once they have appeared in the tabloids. The idea seems to be that the fact that the story has appeared in a tabloid makes the charges news even if there is no source other than the tabloid. The intense competition for news also leads to more emphasis on finding the blockbuster stories. The round-the-clock coverage of the O.J. Simpson trial, the death of Princess Diana, and the death of John F.

Kennedy Jr. are the product of this competition for the 24-hour news market. These blockbuster stories are cheap to produce and attractive to audiences. Moreover, the need to fill air-time has blurred the line between newscasts and entertainment programming. Most of the programming for the all-news outlets is provided by talk shows and infotainment that stress opinion not news. These shows are not designed to report news or explore issues. As Chris Matthews, the host of CNBC's *Hardball,* admitted, "People aren't tuning me in for news. They are tuning me in as an alternative to *Friends.*"[15] Shows like *Hardball* and *Entertainment Tonight* are entertainment shows with the feel of tabloids that sometimes masquerade as news outlets.

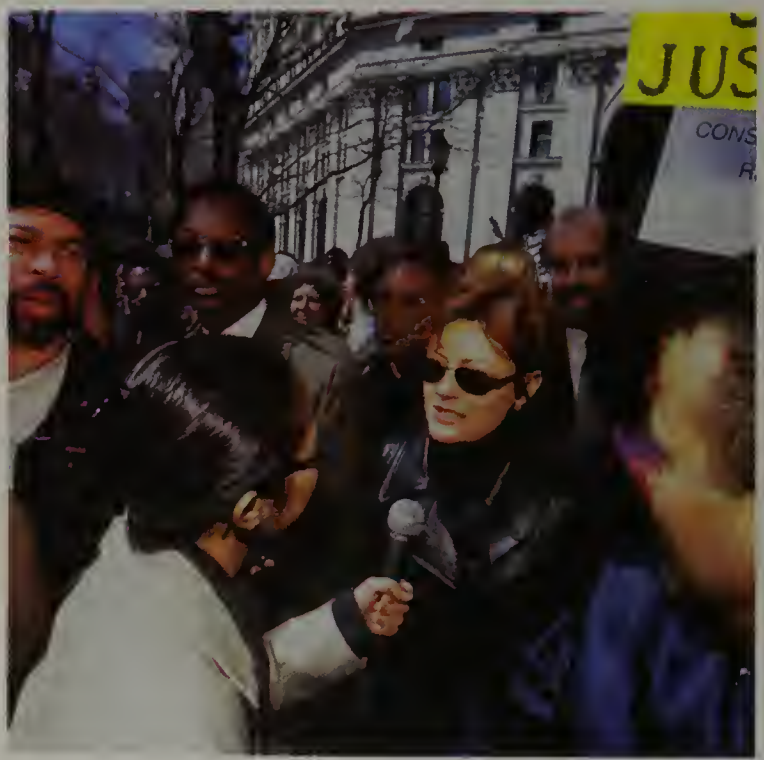
As you will see, this concern for audience appeal has an impact on the way politics is conducted in the United States.

The Effects of the Mass Media

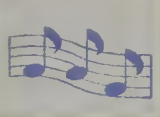
For many citizens, concern about media manipulation stems from a belief that the media have an extraordinary effect on public opinion. Critics of television have been particularly prone to imagine it as dictating the attitudes of a largely passive audience. Indeed, the argument goes, if the media were not influential, why would companies spend so much money on advertisements? Social scientists

Making the News

Newsworthiness is determined by several criteria. Pictured at right is the press coverage of a protest of the New York City police shooting of Ahmed Diallo. The protest provides the conflict that determines basic newsworthiness, but as the picture shows there is an added ingredient: a familiar person to interview. The reporter pictured here is seeking an interview with the actress Susan Sarandon.



MYTHS IN POPULAR CULTURE


The Perfect Villain

In 1998, MGM studios released *Tomorrow Never Dies,* another in a long line of 007 movies. Featuring Pierce Broslan as the swashbuckling secret agent James Bond, *Tomorrow Never Dies* followed the classic Bond formula. Although this is not thought to be one of the better Bond movies, the choice of villain is interesting. In this instance, the evil force is a media tycoon named Elliot Carver, an obvious composite of, among others, Rupert Murdoch, Ted Turner, and Bill Gates. Carver's Media Group controls newspapers, magazines, radio and television stations, satellite broadcasting facilities, and software production. Indeed, as the film opens, Carver is preparing to host a party to celebrate the launching of his latest satellite, which will give him access to every person in the world.

As the plot develops, we see that Carver is a megalomaniac who is determined to use the power of the media to control the world and reap immense profits. Early on we see him discussing his latest software release with an aide, who assures him that it has so many bugs in it that people will be forced to keep upgrading for years. We also see Carver hatching a plot to blackmail the president of the United States into supporting a bill to raise cable television rates and bragging that he invented the story of mad cow disease in order to destroy an English cattle baron who had failed to pay a gambling debt.

Carver's ultimate act of villainy, the one that brings Bond into the story, is his effort to start a war between Great Britain and China. Using one of his satellites, Carver lures a British ship into Chinese waters, where it is observed by Chinese fighters. Carver then sinks the British ship and shoots down a Chinese fighter plane. With each nation thinking the other had perpetrated an act of war, Carver comes close to creating the ultimate blockbuster story. As he says, "There's no news like bad news." Of course the parallels to William Randolph Hearst's supposed responsibility for starting the Spanish-American War are obvious. Notice that both wars were started by the sinking of ships. Indeed, in case we missed the resemblance, Carver explicitly likens himself to Hearst by quoting (actually misquoting) the latter's famous telegram to his artist in Cuba, Fredric Remmington. But Carver has another reason for starting the war. China, it seems, is the only nation blocking his satellite broadcasts, and thus preventing him from obtaining worldwide media domination. Carver has conspired with a corrupt official of the Chinese government, who will take power when the war destroys the current regime. In exchange, Carver is promised exclusive rights to broadcast in China.

Elliot Carver represents an extreme version of the myth of media manipulation. Here we have a powerful media player, answerable to no one, who is not just reporting stories but making them. The entire world is to be manipulated so that Carver can enhance his ratings. By casting a media baron as the villain, MGM capitalized on people's worst fears about the media, but it also demonstrated the marketing realities of a global media conglomerate. As media companies like MGM become global, they must appeal to all nationalities. Specifically, they cannot afford to offend people in large or potentially large markets. Villains based on racial or national stereotypes are increasingly dangerous to profit margins when the product is designed to be sold everywhere. Disney demonstrated the new reality perfectly in its movie *D2,* the sequel to *The Mighty Ducks,* when it cast the bad guys as the team from Iceland, a small country with few movie screens. What better villain, then, than Carver? In a classic example of ironic detachment, MGM cast one of its own as the villain. Carver, as a global media owner, knows no nationality, and since he represents the media, he is distrusted anyway.

who have examined the issue are far less certain of the media's impact. In fact, contrary to the myth, most research suggests that the media by and large fail to change people's settled political beliefs. More precisely, individuals who already hold beliefs on particular issues or candidates are unlikely to change their minds as a result of what they are told by the media.

The media's power to change established political beliefs is limited because people exercise selective exposure, absorbing only information that agrees with their existing beliefs.[16] Such information is more easily incorporated than data that contradict preconceived ideas; those data may be dismissed or entirely ignored. Existing beliefs also influence the way people interpret what they see—a process known as selective perception. Thus a candidate's actions may demonstrate complete integrity to supporters, while demonstrating complete dishonesty to opponents.[17]

Nevertheless, the media are capable of swaying individual beliefs. In matters where a person has neither experience nor a firmly held opinion, the information and interpretation supplied by the media may shape that person's political attitude. Citizens who lack knowledge on a particular subject often adopt the views expressed by media commentators.[18] More importantly, television news is a particularly significant force in shaping the public's attribution of responsibility. Whom the public blames when things go wrong is influenced by the way television frames (presents) the issues. For instance, televised coverage of a particular political issue will be predominately either episodic or thematic. Episodic coverage of an issue, exemplified by live, on-the-scene reporting that focuses on the individual (e.g., a homeless person or the victims of terrorism), encourages the public to attribute responsibility to the private individuals involved. Thematic reporting, on the other hand, puts the issue in a larger, more abstract context and provides in-depth background on it. Stories framed in the thematic style lead the public to attribute responsibility to societal forces or the motives and actions of public officials. Thus perceptions about whether public officials should be held responsible for problems are influenced not only by what television reports but also by how it covers the issue.[19]

Setting the Agenda



What do we know about the world, that we do not learn from the media?

Increasingly, the media also influence the political agenda and the conduct of politicians. When deciding what to cover, journalists focus on some aspects of public life and ignore others. Because the media's choices are often the public's only source of knowledge, what journalists do not report as news might as well not have happened. As Austin Ranney suggests, the appropriate riddle for the media age may well be this: "If a tree falls in a forest but the event is not videotaped or broadcast on the nightly news, has it really happened?"[20]

When the public knows events and issues well, the press has less impact on its attitudes. For example, in a study conducted in 1981 and 1982, individuals exposed to stories alleging that the nation's defenses were weak grew more

concerned about national defense. Stories about inflation, however, had little effect on their opinions, undoubtedly because inflation affects everyone personally.[21] Thus the media wield the most influence in shaping the public agenda when the events and issues are either outside an individual's experience or new to the society.

Priming The capacity of the media to isolate particular issues, events, or themes in the news as the criteria for evaluating politicians.

Of particular importance is the effect that agenda setting by the media has on the public's evaluation of candidates and public officials. Studies examining the effect of media have identified a process called **priming,** which "refers to the capacity of the media to isolate particular issues, events, or themes in the news as the criteria for evaluating politicians."[22] The more attention the media give to an issue, the greater that issue's weight in the formation of public evaluations of candidates and public officials. By highlighting some issues and ignoring others, the media influence the standards by which people judge governments, public officials, and candidates.

Conducting Politics in the Media: Old and New

Politicians are much more attuned to the media than is the public. The conduct of politics is changing in the United States as candidates and public officials increasingly tailor their activities to meet journalists' needs. Thus they plan and time speeches, rallies, and personal appearances to win maximum media coverage, especially on television. To further facilitate coverage, campaign staffers supply the media with daily schedules, advance copies of speeches, and access to telephones and fax machines. If managed well, the campaign exploits the reporters' need for a story and influences the content of news coverage.

Pseudo-events Events, such as speeches, rallies, and personal appearances, that are staged by politicians simply to win maximum media coverage.

All these efforts are in vain, of course, if the campaign cannot get reporters to cover the candidate. To attract reporters, campaigns routinely create **pseudo-events**—staged events, intended to produce media coverage. Pseudo-events are often staged with the special needs of television in mind. Knowing that television producers dislike "talking heads" (footage of the candidate simply delivering a speech), campaign organizers work to provide interesting and symbolic visuals for the evening news. Whether candidates visit farms to indicate their concern for the family farmer or retirement centers to emphasize their commitment to aging Americans, the picture is the thing.

Of the many pseudo-events in American politics, few rival the national parties' nominating conventions. Obviously, a convention in which the outcome is questionable will contain enough drama to attract widespread attention. Since 1952, however, the parties have nominated their presidential candidates on the first ballot. To compensate for the lack of suspense, the parties stage their conventions carefully, hoping to retain media attention. As Ken Reitz, manager of the 1980 Republican National Convention, said, "The whole idea is to make the event into a TV production instead of a convention. The most important thing we can get out of our convention is TV coverage."[23]

Despite the parties' efforts to cater to television, the major television networks are becoming increasingly reluctant to broadcast even an hour a night of party activities. Complaining that there was no news to report, Ted Koppel and his *Nightline* crew left the 1996 Republican convention before it ended. Even more symptomatic of the networks' views was NBC's decision to forgo the acceptance speech of the Republican vice-presidential nominee, Jack Kemp. Instead, the network aired a *Seinfeld* rerun. Faced with a declining audience (only 12 percent of the nation's homes tuned in to the 1996 conventions) and what they see as a lack of news, the major networks in 2000 limited their coverage to 19 hours per convention, much of it rolled into their existing news magazine programs.

Even with all the planning, candidates have become increasingly frustrated with media coverage. Although the coverage is extensive, the established media give candidates little direct access to the public. As political scientist Thomas Patterson has pointed out, the candidates have become voiceless: "For every minute that the candidates spoke on the evening news in 1988 and 1992, the journalists who were covering them talked 6 minutes." Between Labor Day and Election Day in 1992, George Bush and Bill Clinton were heard on the evening news a total of 20 minutes each; Ross Perot was heard a total of 8 minutes.[24] Most of that time came in increments of 10 seconds or less, known as sound bites.

In order to reach the public directly, political candidates have adopted a variety of techniques designed to bypass the established media. One such technique, the video news release (VNR), is a newslike report or interview paid for by the candidate and delivered to local television stations. By renting time on a satellite transponder the candidate can be interviewed by local television reporters all over the country without leaving a studio. The local stations get the chance to interview a national political figure at no cost to themselves, and the candidate covers several cities quickly. This technique also has the advantage that local anchors are seldom as hard on candidates as the national reporters covering the campaign and are more likely to let the candidate talk directly to the audience.

Besides making extensive use of VNRs, the presidential candidates are turning to what have been called "the new media": radio call-in shows, early morning television programs, televised town meetings, and late-night entertainment productions. Ross Perot, for instance, announced both his entry and his re-entry into the 1992 race on *Larry King Live.* Clinton became a master at this new media, appearing not only on *Larry King Live,* but also on MTV, *Donahue, 20/20,* and numerous call-in radio programs. Candidates are also increasingly making use of the Internet. Every major candidate now has a home page outlining his or her background and positions on the issues, and giving instructions for making an online contribution. As Senator John McCain's campaign for the Republican party nomination demonstrated, the Internet can be an effective means of raising money. Indeed, the 2000 election may be a watershed for the use of the Internet by candidates.

For the candidates, these new media offer irresistible opportunities to circumvent the press and speak directly to the American people. President Clinton

Campaigning in Cyberspace

The 2000 election saw candidates at all levels making increasing use of the Internet to reach voters. Here presidential candidate George W. Bush holds up an otherwise traditional campaign placard that prominently displays the campaign's web site address.



described the advantages of the new media best in March 1993 when he told a group of radio and television correspondents, "You know why I can stiff you on press conferences? Because Larry King liberated me by giving me to the American people directly."[25]

Besides affecting the candidates' conduct, media-oriented politics also diverts attention from issues toward campaign strategies. Because, as we have seen, journalists define news as involving conflict and personalities, they pay special heed to the "horse-race" characteristics of elections. Media attention focuses on who is winning and why. When issues are discussed, the question is how the candidate's position will help or hurt the campaign. For reporters, elections are simply games in which candidates devise tactics to defeat their opponents. Foremost among the tools for reporting campaign strategy is the public opinion poll. Even though polls are of little value to voters other than those making book, the media saturate their audience with frequent and often hyped results. The public opinion poll is the press's version of the pseudo-event; the press creates and pays for polls and then covers them as news.[26]

Illustrative of the horse-race method of coverage is the 1988 presidential election. According to Marjorie Hershey, from September to election day 1988, almost two-thirds of the campaign coverage in the print media dealt with campaign strategy. Indeed, more than in any previous election, the campaign managers, media consultants, and image makers became the story as they provided details of their strategy to reporters, who were ever eager for this information.[27]

CRITICAL THINKING

Is the public well served by the horse-race coverage of elections?

A great deal of the election coverage, then, was about how the campaign was being covered.

Of course, journalists defend this preoccupation with strategy by arguing that the audience prefers to hear about the campaign rather than about the issues. Whether or not they are correct about that, it is apparent that campaign strategies appeal to reporters, editors, and producers for several reasons. These stories are easier to do than more substantial reports because reporting on campaign tactics requires little knowledge of complex political issues. Indeed, horse-race stories can easily be reduced to the simple question of winners and losers. More importantly, reporting on strategy and mechanics provides the kind of dramatic themes that keep an audience interested.

Although there is no unanimity on the effects of horse-race coverage, many observers believe that the emphasis on elections as games has a detrimental effect on public opinion. By highlighting tactics and strategies—described earlier as priming—the media present a consistent image of candidates as political opportunists interested solely in winning elections. According to many observers, the constant repetition of that vision simply increases the public's mistrust of candidates.

The Uneasy Alliance Between Government and the Media

Government officials and journalists are often portrayed as adversaries locked in combat, each trying to best the other. This is an accurate picture when their goals conflict—when, for instance, journalists, wanting the big scoop on governmental waste, fraud, or incompetence that will bring them instant fame, confront government officials, who want the press to present their actions in the most favorable light possible. At other times, however, journalists' and officials' goals overlap, and the two groups cooperate. Journalists court officials to obtain the information that is their livelihood, and government officials woo the media in order to build public support for their policies. As veteran newscaster Walter Cronkite once remarked, "Politics and media are inseparable. It is only the politicians and the media that are incompatible."[28]

Furthermore, government officials are avid consumers of journalism—more so than the general public—and this fact creates additional incentives for cooperation. The mass media provide an important communications link among officials, informing them of what others in and out of government are doing and saying. When, for instance, King Hussein of Jordan wanted to respond to American criticism that he was favoring Iraq in the Gulf War, he bypassed normal diplomatic channels and responded to President Bush by appearing on CNN.

Given this mutual dependence, the media and government form an uneasy alliance. Journalists report the actions of government officials, particularly the president and the more prominent members of Congress, while government officials attempt to shape the content of news.

Covering the President

Nowhere is the uneasy alliance between the media and government more apparent than in the coverage of the White House. Almost everything the president does becomes news. Even trivial events, such as the wanderings of Socks, the Clintons' cat, receive wide coverage. For presidents, this extensive coverage represents a valuable means of reaching the American public on a daily basis, but it is also a source of frustration. The frustration undoubtedly increases throughout a president's term. As political scientist Fred Smoller has demonstrated, television portrayals of presidents become more negative as their terms progress.[29] John Kennedy undoubtedly spoke for all presidents when, in response to a question concerning some particularly critical accounts of his administration, he claimed to be "reading more and enjoying it less."[30]

Because the media provide the vital link between the president and the public, and because, from the president's perspective, journalists cannot be counted on to get their stories right, the White House goes to great lengths to put its view across to the media. Indeed, about one-third of the high-level White House staff are directly involved in media relations.[31]

Most of the responsibility for dealing with the media falls to the president's press secretary, who gives a daily briefing to some seventy-five reporters and photographers who regularly cover the White House. Under constant pressure from editors to file stories on the president, these reporters rely extensively on these briefings and on press releases provided by the press secretary. On occasion, the press secretary may also arrange interviews with the president or provide photo opportunities—a chance to take photographs of the president, though not to ask questions. Most White House reporters simply repeat the information given them by the press secretary. According to Bill Moyers, who was press secretary during Lyndon Johnson's administration, the White House press corps "is more stenographic than entrepreneurial in its approach to news gathering."[32] As a result, presidents are less subjects of news coverage than they are sources of news.

Press Conferences. Presidents communicate with the public through the press conference. Although press conferences often seem spontaneous, they are in fact highly structured events that allow the president a great deal of control. Typically, these 30-minute affairs begin with a short statement. This enables the president to speak directly to the public; it also reduces the time available for questioning and focuses the audience's attention on a subject of the president's choosing.

Careful preparation and rehearsal further strengthen presidential control of press conferences. Days, or even weeks, before a press conference, the president's staff prepares a list of questions most likely to be asked and then provides written answers so that the president can study and rehearse them. Ronald Reagan, for instance, held mock news conferences. Furthermore, presidents can and do frequently call on reporters who are known to be friendly to their administration. Such reporters are far more likely than others to ask easy questions or even to ask questions furnished (planted) by the White House. At Reagan press conferences, reporters thought to be sympathetic to the administration, called the "known friendlies," were seated in front and to the president's right. If a line of questioning became uncomfortable, Reagan needed only to "go to the right."[33]

Though press conferences can be a valuable tool, they still pose risks. Even with a high level of control over what questions are asked and by whom, presidents cannot avoid embarrassing or politically charged queries. Few presidents are satisfied with press conferences as an institution, and most take part in them with some misgivings. Indeed, during his first year in office, President Clinton sought to avoid the traditional press conference by combining new technologies and the new media, which had proved so useful in the election campaign. For instance, the White House quickly implemented methods of making the full text of speeches and presidential proposals available electronically (through the Internet) to circumvent the filtering influence of press summaries. The administration also made frequent use of satellite press conferences with local journalists across the country and satellite media tours during which top administration officials gave 5-minute interviews to local reporters.

Leaks to the Press. The frequent appearance of stories based on information provided by unnamed sources further strains relations between presidents and the media. Such leaked stories have angered many presidents. President Reagan, for instance, dealt publicly with the problem by opening a news conference in January 1982 with these words: "I was going to have an opening statement, but I decided that what I was going to say I wanted to get a lot of attention so I'm going to wait and leak it."[34] A year later an angrier Reagan declared, "I've had it up to my keister with these leaks."[35]

CRITICAL THINKING

Is the public well served by the use of unnamed sources?

Presidents typically react in this fashion when leaks divulge information that they would prefer that the public not know. Yet they applaud other leaks. In fact, it is not unusual for the president or someone acting on his instructions to be the source of many leaks. During a 1992 press conference, President Bush reproached the press for relying on anonymous sources and appealed to the American people to "please ask for a name to be placed next to the source so that I can get mad at the guy who's doing this." The next morning, Marlin Fitzwater, the White House press secretary, announced that Assistant Secretary of State Edward P. Djerejian would be available to brief the press on the president's meeting with King Hussein of Jordan. Fitzwater specified, however, that Djerejian was to be identified only as a senior administration official.



The Stakeout

Since reporters share a common understanding of what constitutes news, they often cover the same events. Pictured here are members of the White House press corps awaiting an announcement from the president.

When reporters pointed to Bush's statement of the previous day, the briefing was canceled.

Often presidents use reporters to send up trial balloons. A story about a proposal under consideration is leaked. If the public or Congress reacts negatively, the president can disclaim the story and drop the proposal. Thus, leaks can be quite useful to the administration. Of course, because the president has no monopoly on leaks, they may also be a source of embarrassment and frustration.

Covering Congress

The media do not seem to pay as much attention to Congress as they do to the executive branch. To some extent, this apparent imbalance is due to the nature of the institution itself. Unlike the administration, Congress has no single leader who can be expected to speak authoritatively, although its members are generally more willing to talk and far less secretive than officials of the executive branch. Reporters cope with the multiple voices of Congress by concentrating their attention on party leaders, committee chairs, and others who hold key leadership positions or are clearly identified as experts on a particular issue. As a result, many senators and representatives receive little or no national media attention. To political scientist Stephen Hess, such focus suggests that "Where You Sit Determines How Often You Will Be Photographed."[36]

CRITICAL THINKING

Does the media present an accurate picture of Congress?

Illustrative of the standards for defining news, coverage of Congress emphasizes partisan conflict and scandal. Policy accomplishments are generally ignored or trivialized. Debates over policy questions are most often described as power struggles, and compromise is characterized as unprincipled behavior motivated by electoral concerns.

Despite these constraints, individual members of Congress often receive favorable attention from parts of the media, especially their home-state media, which often depend heavily on their local senators and representatives to provide a regional perspective on national issues. Many members even become regular contributors to the local media, writing news columns and producing broadcast-quality radio and television tapes for distribution within their constituency.

Covering the Courts

The branch of government least covered by the media is the courts. Although specific decisions of the U.S. Supreme Court may receive substantial media attention, most go unreported. When decisions are reported, the discussion is often superficial, concentrating, again, on who won and who lost.

CRITICAL THINKING

Should the federal courts be open to television coverage?

The complex nature of the decisions and the specialized knowledge necessary to interpret them make judicial opinions particularly subject to misinterpretation by journalists, and justices often complain about such misinterpretation. Nevertheless, justices also remain indifferent to the needs of journalists. For instance, they do not hold press conferences or grant interviews to explain their decisions. Reporters are expected to read the decisions and draw their own conclusions. Most justices accept Justice William Brennan's observation that their opinions "must stand on their own merits without embellishment or comment from the judges who write or join them."[37]

Conclusion: The Great Manipulator?

We began this chapter by noting the general belief that the mass media have dramatically altered the conduct of American politics. But the increasingly sophisticated technology that made possible inexpensive newspapers and then the transmission of voice and images over the airwaves also changed the media. Slowly, newspapers began to emphasize objective reporting of public events. Similarly, radio and television turned into important sources of news, but only after it became apparent that there was an audience for such programming.

Along with the development of the mass media has come the fear, expressed as the myth of the manipulative media, that Americans are in danger of being indoctrinated by journalists. This myth exaggerates the power of the mass media to alter established political opinions. Citizens are not so susceptible to being

told what to think as the myth suggests; they are not uncritical receptors of the media product. Nevertheless, the media do play an important role in framing the issues and setting the political agenda. Journalism may not change political attitudes, but it does have a significant effect on what people think is important and how they form political judgments. In many cases, the choices that journalists make define the political reality.

Furthermore, the mass media have greatly affected the conduct of political campaigns and government business. The media do not simply hold up a mirror to these processes; the reporters and cameras are not invisible observers. On the contrary, media coverage introduces distortions. But again there is little evidence that the distortions are journalistic attempts to manipulate the news. In fact, journalists often feel that they are being manipulated when political candidates and public officials attempt to use them to get their stories across to the public.

Summary

1. Early American newspapers were either organs of the political parties or commercial papers that reported business news to merchants. True mass media did not come into being until the 1830s, with the rise of the sensationalist penny press.

2. The American mass media consist of thousands of alternative outlets. Nevertheless, critics worry that the increasingly concentrated ownership of media outlets threatens the diversity of information.

3. Television and radio are subject to government regulation by the Federal Communications Commission (FCC), which has been reluctant to control the content of broadcasts.

4. Journalists do not just find news; they apply identifiable criteria for selecting stories. These criteria include high impact, conflict, celebrity, proximity, timeliness, and novelty.

5. The power of the media to change public opinion is limited because many people accept only information that confirms their previous beliefs. The less familiar the issue, the more likely it is that the media will have an impact on people's attitudes.

6. American political candidates orient their campaigns to ensure media exposure. Candidates often create pseudo-events solely for the purpose of attracting media attention. Journalists, in turn, are more likely to cover the horse-race elements of political campaigns than the policy issues.

7. Government officials use the media to build public support for their programs, but reporters are often viewed as adversaries who must be controlled.

8. The president is the prime focus of media coverage. Presidential administrations expend a great deal of time and effort in dealing with the media.

9. Congress is a more difficult institution for the national media to cover, but members of Congress receive a great deal of local media coverage. The Supreme Court is the least covered institution of American government, in part because the justices are not particularly attentive to the needs of journalists.



Net Work

Since the Web itself is an increasingly important part of the media, there is no shortage of relevant sites for you to examine. Begin by using your search engine to find a couple of the mainstream news organizations (e.g., the *New York Times* or the major television networks). Compare how they treat the same stories. Then use your search engine to locate additional news sources that are not sponsored by the mainstream outlets.

To put the role of journalism in perspective, check out the Freedom Forum's interactive museum of journalism (the Newsuem) at **http://www.newsuem.org.** Use its historical materials to examine how the reporting of news has changed over the years.

If you are interested in how people react to journalism, the Pew Center for the People and the Press **(http://www.people-press.org)** is a valuable source. Take a look at the surveys measuring the extent to which people follow particular stories. Think about the stories that interest you most. How do your interests compare to those of Americans in general? You might also find it interesting to match the reported public interest in a particular story with the coverage that story actually received. The Annenburg Public Policy Center **(http://appcpenn.org)** regularly conducts and reports studies of television's coverage of politics. How well does the amount of television coverage correlate with public interest in a story?

CHAPTER 10

Congress

- Who Serves in Congress and the Paths That Lead There

Who Serves in Congress?: Characteristics of an elite
Getting Elected: The advantages of incumbency

- The Work of Congress

Making Laws: The "necessary and proper" clause
The Power to Tax
Producing the Budget: From deficit to surplus
Casework: Taking care of the folks at home
Congressional Oversight: Hearings, investigations, and vetoes

- The Organization of Congress

Bicameralism: A divided assembly
Congressional Leadership: The House and the Senate
The Committee System: Types, size, assignments, and leadership
The Nonofficial Groups: Informal groups within Congress
The Congressional Staff: Further decentralization

- How a Bill Becomes Law

Committee Consideration: The crucial step
Floor Action: Differences between the House and Senate
Conference Work: Working out compromises

- Influences on Congressional Voting
- Conclusion: Is Congress the Broken Branch?

MYTH & REALITY

Is Congress ineffective and buried under partisan bickering?

MYTH & REALITY

Almost two decades ago, television anchorman David Brinkley, discussing the possibility that Congress would pass an important measure in a month's time, summarized the electorate's frequent disgust with Congress when he observed, "It is widely believed in Washington that it would take Congress thirty days to make instant coffee work."[1] The image of Congress as paralyzed by its own internal bickering and lack of effective leadership pervades almost all discussion of the institution. Consequently, public opinion polls routinely find that the American public lacks confidence in Congress. It is rare to find a poll that reports even half the people approving of the way Congress is doing its job.

Consequently, a rather widely held *myth of Congress as the broken branch,* an institution incapable of effective action, is hardly surprising. That image of Congress seems easy to support by listing the pressing national problems that remain unsolved. The huge national debt, homelessness, sagging educational performance, a troubled health care system, and the countless other problems plaguing society at any given time could be solved, so the myth assumes, if only Congress were more effective. Putting aside the possibility that, in the short run at least, the problems may be insolvable, the myth does an injustice to the complex nature of Congress as an institution.

As you will see, the myth rests on the perception that Congress is solely a policymaking body, but that view ignores the full range of congressional responsibilities and their often contradictory nature. For instance, it is important to note at the outset that Congress is a representative institution as well as a policymaking one. Congress does not just make laws for the nation; its members are also expected to represent the interests of the states and districts they serve. Congress must find ways to reconcile these different interests in the course of producing national policy. Moreover, Congress was designed as a deliberative body that would act to change the status quo only if a broad consensus favored change. Efficiency was never the goal. A look at how Congress is organized should help illustrate these points.

Who Serves in Congress and the Paths That Lead There

Article I of the Constitution specifies only three criteria for membership in the U.S. Congress. To be eligible to serve as a senator, a person must have reached the age of thirty by the time he or she takes office, must have been a citizen of the United States for at least nine years, and must reside in the state from which he or she is elected. Representatives may enter office at the age of twenty-five and after only seven years of citizenship. Members of the House must also reside in the states from which they are chosen, but the Constitution does not require residence in the districts they represent.

Who Serves in Congress?

Despite these rather minimal requirements, a group portrait of Congress reveals an institution composed of individuals drawn from the upper levels of American society. The typical member is a middle-aged, highly educated white male who was previously employed in a high-status occupation that earned him an income well above the national average.

Education and Occupation. As befits an elite, virtually all members of Congress hold a college degree, and a majority have completed some form of graduate work or professional study. Senators and representatives come from many different occupations, but lawyers outnumber the members of any other profession. When the 107th Congress convened in 2000, about 40 percent of the members were lawyers. Although that percentage is lower than it was in the 1970s, the legal profession is still a steppingstone to Congress. Next to law, business and banking are the most common occupations of legislators. Members of such occupational groups as manufacturing workers, farm laborers, and domestic servants are rarely found in Congress.

Race and Sex. In the period immediately after the Civil War, more than twenty blacks (all of them Republicans) served in Congress. By the late nineteenth century, restrictions on the voting rights of blacks had eliminated their

Diversity in Representation

Shown here at a congressional hearing on impeachment is Representative Maxine Waters, D-CA, a well-known and respected member of the black caucus. Despite recent gains in congressional seats and the contributions of high-profile legislators such as Waters, blacks, Hispanics, women, and other groups are still underrepresented in Congress.



congressional representation entirely. No black Americans served in Congress from 1900 until 1928, when Oscar DePriest, a Republican from Chicago, was elected to the House of Representatives. During the next twenty-five years, only three more blacks entered Congress.

CRITICAL THINKING

Does it matter that there are few women or minorities serving in Congress?

In the 1970s, the number of black legislators increased significantly, and in 2001 thirty-nine blacks served in the House (all but one of them Democrats). There are no African American senators. Despite these recent gains, blacks, who constitute about 11 percent of the population, are still underrepresented in Congress.

Faring slightly better is the Hispanic community, which had twenty-one representatives—almost 5 percent of the seats in the House—in 2001. This is a fivefold increase since 1980, when the House contained only four Hispanics. The 1992 elections produced the first Native American senator in sixty years.

The first woman to serve in Congress, Representative Jeannette Rankin, a Montana Republican, was elected in 1916, four years before the Nineteenth Amendment guaranteed women nationwide the right to vote. Although defeated in 1918 when she sought the Republican nomination for a Senate seat, she returned to Congress for one term in 1940. Since Rankin's election, slightly more than a hundred women have served in Congress.

During the 1970s and 1980s, women made only incremental gains in terms of congressional seats. Between 1980 and 1991, for instance, women gained only seven seats. But in 1992, which many dubbed the "Year of the Woman," women won a record-breaking forty-seven House seats. Since then the pace has slowed again, but women continue to make some gains. When the 107th Congress convened in January 2001, fifty-nine women took their seats in the House and thirteen women were serving in the Senate.

Getting Elected

Despite the myth of Congress as the broken branch, the American public demonstrates considerable faith in individual members by consistently re-electing incumbents—proving, as Albert Cover put it, that "one good term deserves another."[2] Since 1946, more than 90 percent of the House incumbents who sought re-election have won and slightly over 80 percent of the incumbent senators seeking re-election have been victorious.

Remarkably, incumbents did well even in 1994. The 1994 election marked a historic change in Congress as the Republicans gained fifty-three seats and took control of the House for the first time in forty years. Several highly prominent members of the House were defeated, including Thomas S. Foley, the Speaker of the House in the 103rd Congress. (Foley became the first Speaker defeated in a re-election bid since 1860.) But the election was not simply the product of anti-incumbent fever. House members who sought re-election generally did well—overall, slightly more than 90 percent of them won. Of course, the losses were not distributed equally between the parties. Not one incumbent Republican was

defeated, whereas thirty-five incumbent Democratic representatives and two Democratic senators lost their seats. Yet even in that seemingly bad year for Democratic incumbents, 84 percent of them were returned to Congress.

Subsequent elections have trimmed the size of the Republican majority in both houses. In 1996, for instance, over a dozen first-term Republicans were defeated. The Republican majority has, however, continued to benefit from the incumbency advantage. In both 1998 and 2000, the incumbent re-election rate exceeded 98 percent.

Despite the incumbents' success in keeping their seats, Congress has experienced substantial turnover. More than half of the current representatives and 40 percent of the senators have arrived since 1992. High re-election rates notwithstanding, many members decide against seeking re-election. Some retire because of age, others weary of the workload or wish to return to private life for some other reason, and still others believe they cannot win re-election.

Just why incumbents do so well is the subject of much speculation. One frequent explanation is that House incumbents are "safe by design"—that is, their districts have been drawn to maximize their party's strength among voters. The process of designing districts does, in fact, have a major impact on political power within Congress. Every ten years, in response to the census, House seats are redistributed among the states and House districts are redrawn by state legislatures. The Supreme Court has held that in drawing the new boundaries, state legislatures must create districts that are approximately equal in population.[3] Furthermore, the districts may not be designed to dilute minority voting strength.[4] However, in *Miller* v. *Johnson* (1995), the Supreme Court ruled that so-called majority-minority districts, districts that create a political majority for a racial or ethnic minority are unconstitutional if race was the "predominant factor" in drawing the boundaries. Thus if districts are designed with the intent of giving an advantage to a racial or ethnic group, they are likely to be unconstitutional. Nevertheless, legislatures have considerable freedom to engage in the practice of **gerrymandering**—the drawing of district boundaries in ways that gain political advantage.

Gerrymandering The practice by the party controlling the state legislature of drawing congressional district boundaries to maximize the number of seats it can win.

The party controlling a state government generally attempts to draw boundaries that maximize the number of seats it can win. It tries to concentrate the other party's supporters in the fewest possible districts and to create majorities of its own supporters in as many districts as possible. In 1981, for instance, Indiana Republicans, who controlled the state legislature and the governor's office, produced a reapportionment plan that placed three Democratic incumbents in the same district and required all five Democratic incumbents to move their residences.[5]

Clearly, some incumbents benefit from these practices, but gerrymandering alone cannot explain the success of incumbents. Incumbents have been receiving larger percentages of the vote even in states that did not redistrict.[6] With or without gerrymandering, they have a variety of resources on which to draw. They find it easy to get their names before the public, and they are almost always better known and viewed more favorably than their challengers. Former Speaker of

the House Jim Wright may have been correct when he said that outside their districts, members of the House are individuals of "widespread obscurity," but within their districts they are conspicuous.[7] This visibility is the result of hard work and the skillful use of the resources of office. As one observer noted, "When we say Congressman Smith is unbeatable, we mean Congressman Smith is unbeatable as long as he continues to do the things he is doing."[8]

Members of Congress have a wide array of official resources that they can use in pursuing re-election. For example, incumbents can send out mail free of charge. Using this **franking privilege** to send out newsletters or questionnaires enables them to cultivate a favorable image among constituents. A long-distance WATS line, shared use of a completely equipped television studio, an allowance to maintain district offices, and a travel allowance sufficient to permit weekly visits to their districts further help incumbents enhance their name recognition. The dollar value of these services and privileges is conservatively estimated at more than $1 million over a two-year House term.

Franking privilege The power of members of Congress to send out mail free of charge; this allows incumbents to cultivate a favorable image among constituents.

Sitting members of Congress also have opportunities to engage in "credit claiming"—taking credit for benefits that constituents receive from the national government.[9] When a representative or senator announces an award of federal money for a new dam, a highway extension, or an important defense contract, the effect is to portray him or her as someone who is working hard for the district and getting results. Legislation appropriating funds for local projects is often referred to as **pork-barrel legislation.** Securing such benefits for one's district is "bringing home the bacon."

Pork-barrel legislation Legislation that appropriates funds for local projects in an area that a member of Congress represents.

Finally, incumbents' success depends on what political scientist Richard Fenno has called their **home style,** or the way they present themselves to their constituents. As Fenno observed, "It is the style, not the issue content, that counts most in the re-election constituency."[10] Although incumbents may differ in how they present themselves, their purpose is the same: to win the voters' trust. This kind of bond does not develop overnight; it takes time and constant attention, but the rewards can be great. An incumbent who is trusted by the voters is relatively safe from political attack and is likely to find constituents understanding of occasional political mistakes. In the brief time span of a campaign, challengers find it difficult to establish this kind of relationship.

Home style The way in which incumbent members of Congress present themselves to their constituents in an attempt to win the voters' trust.

Although incumbents have a strong advantage, they are not invincible. Challengers can win, but they generally have to spend a great deal of money; just how much varies from race to race. As we mentioned in Chapter 7, on campaigns and elections, money does not buy elections, but it may buy the name recognition that is essential to competing against a well-known incumbent.[11] Unfortunately for challengers, incumbents have a decided advantage in raising campaign contributions, particularly those from political action committees.

CRITICAL THINKING

Should Congressional terms be limited?

The electoral advantage enjoyed by incumbents has given rise to a call for term limits. Since 1990, 23 states have passed legislation or amended their constitution to limit the tenure of members of Congress. In 1995, however, the Supreme Court declared such limits unconstitutional. Writing for a sharply divided court in *U.S. Term Limits Inc.* v. *Thorton,* Justice John Paul Stevens argued

CLOSER TO HOME



Legislating in the States

In the late eighteenth and early nineteenth centuries, when the first states drafted their constitutions, they made the legislatures the center of government. Powerful assemblies were seen as the greatest protection against autocratic executives. These early constitutions had high expectations for their assemblies and placed very few restraints on them. The early constitutions, for instance, provided for frequent legislative sessions, because it was widely assumed that the more often the legislators met, the more responsive they would be to the voters.

By the middle of the nineteenth century, however, this faith in legislatures had begun to wane. Mired in corruption and scandal, state legislatures came to be seen as a threat to democracy rather than as its guardian. As a result, state constitutions were rewritten or revised to limit the power and authority of legislatures. By the beginning of the twentieth century, almost all states had significantly curtailed legislative power. Characteristic of the effort to curb power were the numerous restrictions on the frequency and duration of legislative sessions. A legislature that was infrequently in session and then only for short periods could not cause much trouble.

Under pressure from various reform groups, the pendulum began to swing back toward legislative power in the late 1960s. In recent decades, many states have modernized and empowered their assemblies, extending their sessions and providing legislators with salaries and support services. Nevertheless, distrust dies hard, and few state legislatures even approach the professionalism of the U.S. Congress.

The frequency and length of state legislative sessions illustrate these differences. Eight states still restrict their legislatures to biennial sessions, and thirty-seven states limit the length of sessions. In Kentucky, legislative sessions can be held only in even years and can last only 60 days. In one of the largest states, Texas, the state constitution limits the legislature to 140 days every 2 years. (Some critics would have liked the constitution to specify that the legislature meet for 2 days every 140 years.)

Because Americans have long favored citizen legislators, compensation in state assemblies has been low—hardly enough to attract those without independent means. Historically, state legislators were paid on a per diem basis. Indeed, thirteen states still use this system of payment. Alabama legislators meet for a maximum of thirty days each year and receive $10 a day. Thirty-seven states now pay legislators an annual salary, but in most of them the level of compensation is set by the constitution, making it difficult to change. New York legislators receive more than $57,000 a year—still far short of congressional salaries. Most states pay considerably less, with New Hampshire paying the least—$100 a year.

State legislators also lack the staff resources that have become so common in Congress. In an effort to modernize, states have, in recent years, increased the availability of legislative staff. Still, few states provide for any personal staff beyond the secretarial, and even the secretarial staff generally has to be shared. Maine, for example, allocates one secretary for every forty-five members of its House of Representatives. All but two states do provide staff for at least some of their standing committees. Lacking staff resources, state legislators must often rely on executive branch employees and lobbyists for information.

Increasingly, state legislators are also being subjected to term limits. In the 1995 case of *U.S. Term Limits, Inc.* v. *Thorton,* the U.S. Supreme Court ruled that states could not impose term limits on their congressional delegations, but the ruling did not apply to state legislators. Twenty states now have limits on legislative service, but there is little

uniformity in applying them. Several states treat service in the two chambers separately, allowing members to serve the maximum limit in each chamber, whereas some other states restrict the total length of service in the legislature. Oklahoma, for instance, permits only twelve years of total service.

The working conditions in state legislatures are likely to become a larger issue in American politics as federal lawmakers pursue a policy of devolution, shifting more responsibilities from the national government to the states. It remains to be seen whether state legislatures are equipped to handle the new responsibilities.

Sources: Ann O'M. Bowman and Richard C. Kearney, *State and Local Government*, 3rd ed. (Boston: Houghton Mifflin, 1996), and *The Book of the States, 1994–95 Edition*, vol. 30 (Lexington, Ky.: Council of State Governments, 1994).

that the states do not have the constitutional authority to regulate the tenure of federal legislators. Limiting congressional terms, the majority ruled, requires a constitutional amendment. Proposed constitutional amendments setting term limits failed in Congress in both 1995 and 1997, and voters continue to demonstrate approval of their members by re-electing them.

The Work of Congress

Even though the Constitution establishes a government in which three branches share power, the framers were united in the belief that the legislature should play the central role in governing. As a result, Congress is charged with several different kinds of duties.

Making Laws

Article I of the Constitution charges Congress with making binding laws. In addition, Section 8 of Article I lists a series of specific congressional powers, known as the *enumerated powers*—for example, the power to establish post offices and to coin money. Section 8 also gives Congress the power "to make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States." This "necessary and proper" clause has been interpreted by the Supreme Court in such sweeping terms that Congress can now legislate in nearly every aspect of American life.[12]

The Power to Tax

Foremost among the duties of Congress is the setting of taxing and spending policies for the nation. According to the Constitution, bills raising revenue

(taxes) are to originate in the House, but because the Senate may amend these bills, the distinction is not particularly significant.

Tax policies—always an important issue—took on still greater prominence in 1981 when Congress, at the urging of President Ronald Reagan, passed what was at the time the largest tax cut in U.S. history. Then in 1982 concern over the growing national deficit led to changes that constituted the largest peacetime tax increase in U.S. history. Congress followed these measures with the Tax Reform Act of 1986, a bill that completely overhauled the federal income tax system. Hailed by supporters, including Reagan, as promoting a simpler tax system, the bill cut individual tax rates, dramatically reduced the number of income tax brackets, and eliminated many deductions. A new tax bracket for those earning over $140,000 and a surcharge of 3.6 percent were added in 1993. Tax policy remains a staple of congressional work.

Producing the Budget

Equally controversial are the spending decisions (appropriations) made yearly by Congress and incorporated as the federal budget. Throughout most of the nation's history, Congress made no attempt to coordinate the federal budget. The budget was simply the total of the separate appropriations made to each department of government. For nearly three decades, however, Congress has attempted to centralize the budget process and place restraints on overall spending levels.

With the passage in 1974 of the Budget and Impoundment Control Act, Congress established a new budget committee in each house. These committees receive the president's budget and an analysis provided by the Congressional Budget Office (CBO), which was created to provide Congress with expertise equivalent to that possessed by the executive branch. The CBO analyzes the president's budget, identifies changes in spending levels,and estimates the expected revenue from taxes and other sources. It also projects the cost of **entitlements,** which are payments that automatically go to any person or local governmental entity that meets the requirements specified by law—social security benefits and military pensions are examples. On the basis of that information, the budget committees recommend to their respective houses spending ceilings for major funding categories. These recommendations constitute the **First Concurrent Budget Resolution,** which must be passed by both the House of Representatives and the Senate by April 15 each year.

Entitlements Payments that automatically go to any person or local governmental entity meeting the requirements specified by law; examples are social security benefits and military pensions.

First Concurrent Budget Resolution The recommendation for spending ceilings in major funding categories. It is submitted to the House and Senate by their respective budget committees and must be passed by April 15.

In formulating the funding bills for specific departments and programs, the various appropriations committees of the two houses are expected to follow the overall spending guidelines set by the budget resolution. If the guidelines are exceeded, either the appropriations must be reduced or the House and Senate must agree to amend the amounts in the first budget resolution.[13] This process, known as *reconciliation*, has to be completed by the passage of a second budget resolution in September.

The act created a new sense of coherence in the budgeting process, but it did not reduce the budget deficit. It was simply too easy for Congress to ignore the first budget resolution and pass a second one that merely totaled the various appropriations bills. In the 1980s, combinations of tax cuts and spending increases brought record deficits. In response, Congress passed, in 1985, the Gramm-Rudman-Hollings law, which set a series of deficit reduction targets that were supposed to produce a balanced budget in 1993.

Central to the workings of Gramm-Rudman-Hollings was the assumption that the threat of sequestrations, or the withholding of funds already appropriated, would force Congress to make the tough decisions necessary to reduce the deficit. But in 1990, the sequestrations demanded by the law were so drastic that the process lacked credibility. According to one estimate, the sequestration process demanded by Gramm-Rudman-Hollings would have required "a halving of military forces, the closing of many air traffic control installations, the end of meat inspections for five months, a halt in new cleanups of toxic waste sites, and cancellations of vaccinations against childhood diseases for one million children."[14]

After months of battling between Congress and the president, Congress avoided the sequestration by passing the Budget Enforcement Act of 1990, which once again reformed the budgeting process. This new act largely displaces Gramm-Rudman-Hollings by establishing more flexible deficit targets. Instead of focusing on deficit targets, it divides discretionary spending into three categories (defense, domestic, and international), with a spending cap on each. If spending in any of the categories exceeds the cap, it will trigger automatic cuts in that category. Moreover, savings in one category may not be used to offset expenditures in another. Finally, the 1990 act stipulates that changes in eligibility requirements for entitlement programs that increase expenditures must be offset by either decreases in other entitlement programs or tax increases. This pay-as-you-go feature of the new act was invoked in 1991, when Congress extended eligibility requirements for unemployment compensation. In accordance with the act, Congress included in the extension new taxes to pay for the benefits.

CRITICAL THINKING

Should the Constitution be amended to require a balanced budget?

In 1997, Congress and the president agreed to a bipartisan plan to balance the budget by 2002. Aided by a rapidly growing economy, the goal of a balanced budget was actually achieved by fiscal year 1999, and subsequent years have produced budget surpluses. This dramatic reversal of economic circumstances has led to new controversies over what to do with the excess revenues. Many in Congress are urging substantial tax reductions, while others contend that the surplus should be used to pay down the national debt (the accumulation of years of budget deficits), which stands at about three trillion dollars. Other proposals include new spending initiatives on health care and education and shoring up the social security system. With the advent of budget surpluses, the terms of the debate have changed, but the stakes remain high. Moreover, all of this could once again become moot if the growing economy should slump. An economic downturn could derail the bipartisan agreement and drive deficits back up.

Casework

Casework Work done by members of Congress to provide constituents with personal services and help through the maze of federal programs and benefits.

Besides representing constituents on policy questions, members of Congress are expected to provide constituents with personal services, called **casework.** Senators, representatives, and their staffs spend a great deal of time and energy helping constituents through the maze of federal programs and benefits. For instance, are you leaving the country and need a passport in a hurry? Contact your representative. Maybe you need help with a small-business administration official who will not return your phone call. Or you're having problems getting a Veterans Administration or social security check. Perhaps you have a son or daughter in the army who has not written home in several weeks. Call the district office of your representative or senator.

Many members of Congress complain that casework reduces them to errand runners, but few refuse to do the work. Instead, most members have accommodated the demand for casework by enlarging their district or state offices. Between 1972 and 1987, for instance, the total number of staff assigned by members of the House to their district offices more than doubled, and the number of Senate staffers located in the state offices more than tripled.[15]

Though it may be tiresome, casework is good electoral politics. As Morris Fiorina pointed out some fifteen years ago, "The nice thing about casework is that it is mostly profit; one makes many more friends than enemies."[16] But casework is more than simply good politics; it is also a form of representation. Richard Fenno reminds us that constituents may want "good access or the assurance of good access as much as they want good policy."[17] Contrary to the myth of Congress as the broken branch, members of both the House and the Senate are quite effective at providing that access. However, service to their constituents undoubtedly diminishes the capacity of members and their staffs to engage in policymaking.

Congressional Oversight

The passage of a law rarely ends congressional involvement in the matter. Congress is responsible for overseeing the activities of the executive agencies charged with implementing policy. This process of legislative oversight, which has become a crucial aspect of congressional work, takes many forms. For instance, casework can sometimes bring the weakness or ineffective administration of a program to a member's attention.[18] Congress may also require executive officials to prepare periodic, detailed reports of their activities. In the 1996 Department of Defense appropriations act, for instance, Congress mandated so many reports that it took the Pentagon 111 pages just to list them. Often, however, the oversight function is performed as part of the appropriation process. The hearings to consider agency budgets give members of both houses an opportunity to question executive officials extensively. As one member of the House Appropriations Committee remarked, "You keep asking questions just to let them know someone is watching them."[19]

Answering to the Hill

Executive branch officials are often called to testify before various congressional committees to explain their agency's activities. Here the Clinton administration's attorney general, Janet Reno, answers congressional questions regarding her stewardship of the Department of Justice.



More dramatically, Congress may exercise oversight by conducting committee investigations. A committee of either house can compel testimony and evidence from government officials and private citizens for the purpose of proposing new legislation. Congress used this committee oversight function in 1997 to investigate various campaign financing issues surrounding President Clinton's re-election campaign.

Legislative veto A device in a bill that allowed Congress or a congressional committee to veto the actions of an executive agency or the president in an area covered by the bill. It was declared unconstitutional by the Supreme Court in 1983.

In the 1970s, Congress increasingly relied for oversight on the **legislative veto**—a device in a bill that allowed Congress or a committee of Congress to veto the actions of an executive agency or the president in an area covered by the bill. Using the legislative veto, Congress would pass a statute granting the president or an administrative agency wide discretion in formulating specific policies, but these policies would be subject to congressional approval. Thus, in the War Powers Resolution of 1973, Congress gave the president the authority to send troops into a hostile situation for sixty days. The troops would have to leave at the end of that period unless Congress declared war or provided specific statutory authorization.

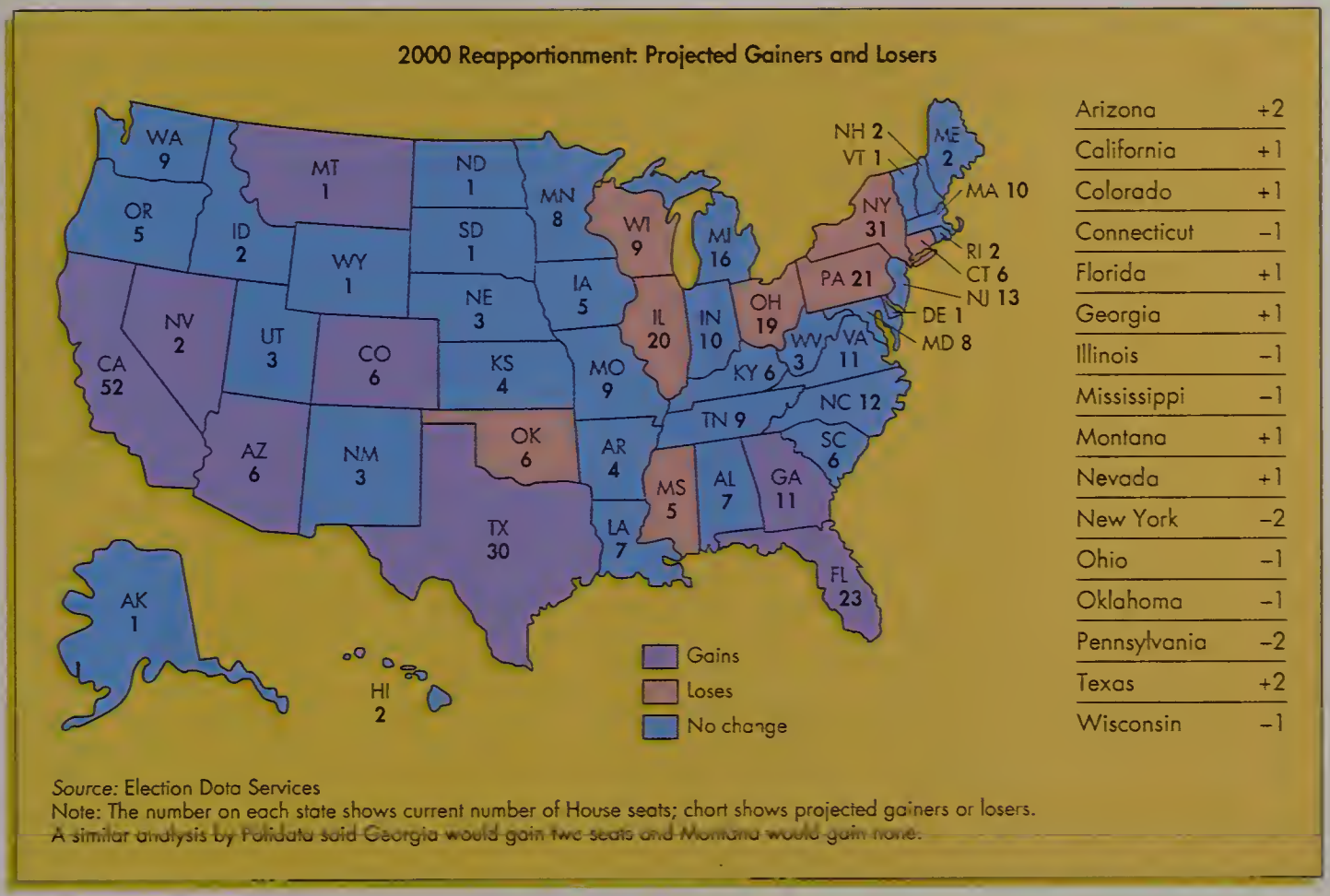


FIGURE 10.1
2000 Reapportionment: Projected Gainers and Losers

In 1983, the Supreme Court declared the legislative veto unconstitutional.[20] Nevertheless, Congress has been reluctant to give up this form of oversight. Because the language of the Supreme Court opinion is not entirely clear, Congress has continued to include the legislative veto in statutes. Whether these laws will also be declared unconstitutional by federal courts remains to be seen.[21]

The Organization of Congress

Bicameral Refers to a legislature that is divided into two separate houses, such as the U.S. Congress.

The U.S. Congress is a **bicameral** legislature: a legislature divided into two separate houses. Our Congress, however, differs markedly from most bicameral legislatures in other countries in that the two houses have nearly equal power. That arrangement was set up in order to divide power and to strike a balance between the large

and the small states. Furthermore, Congress is "an assembly of equals,"[22] in which each senator or representative has his or her own constituency to represent, and consequently each member of Congress has an equal claim to legitimacy. The effect of this egalitarianism in Congress is to fragment and decentralize power, which must be structured in some manner if the institution is to make policy.

Bicameralism

The founders designed the two houses to represent different elements in American society. The House of Representatives, with its membership based on frequent and popular elections, was to be the voice of current public opinion. James Madison saw the House as "the grand repository of the democratic principles of government." In contrast, senators, originally chosen by state legislatures, were expected to curb the radical tendencies of House members. George Washington gave what may be the best description of the purpose of the Senate. When asked by Thomas Jefferson why the Constitutional Convention had agreed to the second body, Washington replied, "Why did you pour that coffee into your saucer?" "To cool it," responded Jefferson. "Even so," said Washington, "we pour legislation into the senatorial saucer to cool it."[23]

The Seventeenth Amendment, ratified in 1913, changed the mode of electing senators, making them also chosen directly by the electorate. Although the founders' expectations for the two bodies may not have been completely fulfilled, the bicameral structure is still an important feature of the American legislative system. Because the two houses are nearly equal in power, public policies are the product of two distinct legislative processes, with two sets of rules, politics, and internal dynamics. These differences fragment power and give Congress a decentralized organization.

Congressional Leadership

Although the Constitution does not mention political parties, congressional leadership is party leadership, for the political parties organize Congress.

Speaker of the House The only House position created by the Constitution. The Speaker is chosen by a vote of the majority party and is the presiding officer of the House, the leader of its majority party, and second in line to succeed the president.

Leadership in the House. The **Speaker of the House** is the presiding officer of the House, the leader of its majority party, and second in line, behind the vice president, to succeed the president. The only House position created by the Constitution, the Speaker was supposed to be elected by the entire body but is actually chosen by a vote of the majority party.

Because the Speaker serves as leader of the majority party and presides over the House, the position is the most powerful in Congress. Nevertheless, the Speaker's power has greatly diminished since the early 1900s, when Speakers dominated the business of the House. The last of the truly powerful Speakers, Joseph "Uncle Joe" Cannon, assigned members of both parties to committees, appointed and removed committee chairs at will, controlled the flow of bills to

the floor, and exercised complete authority to recognize members' right to speak on the floor. Cannon's almost dictatorial control of the House precipitated the 1910 "revolt against the Speaker," which stripped the office of all committee assignment powers and drastically limited the power of recognition. Modern Speakers have regained some power.

Majority leader The second-ranking party position in the House (and the first in the Senate). The majority leader schedules floor action on bills and guides the party's legislative program through the House.

The holder of the second-ranking party position, the **majority leader,** schedules floor action on bills and guides the party's legislative program through the House. The majority leader also works with the Speaker and other party leaders to develop the legislative agenda for the party. The majority leader generally succeeds the Speaker; at least this was true of the last five Democratic speakers. Not surprisingly, the contest for majority leader in the Democratic party is often intense. Former Speaker of the House Jim Wright of Texas was elected majority leader in 1977, beating the last of three other candidates by a single vote.

Minority leader The head of the minority party in the Senate. Also the leader of the minority party in the House, who represents its interests by consulting with the Speaker and majority leader over the scheduling of bills and rules for floor action.

The **minority leader** heads the opposition party in the House and represents its interests. The minority leader also consults with the speaker and the majority leader over the scheduling of bills and rules for floor action. Like their counterparts in the majority party, minority leaders are generally seasoned legislators. When Robert Michel of Illinois, minority leader from 1981 to 1992, was first elected to that post, he had already served twenty-four years in the House. The majority and minority leaders have the assistance of the **party whips,** who support the party leaders by communicating the party positions to the membership and keeping the leaders informed of members' views.

Party whips Members of Congress who support the party leaders in the House and Senate by communicating the party positions to the membership and keeping the leaders informed of members' views.

Senate Leadership. The Constitution makes the vice president of the United States president of the Senate. This is largely a ceremonial position; the Senate's presiding officer votes only to break a tie. Of greater importance are the positions of majority and minority leader. Much like their counterparts in the House, the majority and minority leaders of the Senate are expected to organize support for party initiatives. Furthermore, the majority leader is expected to manage floor activity, while the minority leader represents the "loyal opposition." When the majority leader is a Democrat, he or she heads the party in the Senate and chairs the committees that assign members to committees and schedule floor debates. When the Republicans are in the majority, these tasks are assigned to three different senators. The Senate also has whips, although they have fewer responsibilities than House whips.

The Committee System

Party leaders in both houses struggle to bring organization to a fragmented institution. In their efforts to manage the Congress, they must contend with a committee system that distributes power to many others, because work in the modern Congress is mostly carried out in committees and subcommittees. These "little legislatures," as Woodrow Wilson referred to them, screen the thousands of bills introduced in each session and decide which should be recommended for

consideration by the larger body. The few bills that the committees recommend for floor action define the congressional agenda. Bills passed over by committees rarely reach the floor.

It has not always been that way. In the early days of Congress, temporary committees considered specific legislative proposals and then disbanded.[24] These committees had little independent power and could not withhold a bill from floor consideration. Only gradually did Congress come to rely on permanent committees.

CRITICAL THINKING

Why does Congress need standing committees?

Types of Committees. The most important committees in Congress are the **standing committees.** These are permanently established committees that consider proposed legislation in specified policy areas and decide whether to refer it to the larger body. It is to the standing committees that nearly all legislation is sent. Table 10.1 lists the standing committees of the 106th Congress.

Standing committees Permanently established committees that consider proposed legislation in specified policy areas and decide whether to recommend passage by the larger body.

Most of the standing committees also have subcommittees, each of which covers a portion of the policy area controlled by the larger committee. Throughout the 1980s, the power of subcommittees grew, and congressional scholars began to describe the policy process as dominated by subcommittees. In 1995, however, the new Republican majority moved to rein in subcommittee power. The number of subcommittees was reduced, and subcommittee staffs were dramatically cut. More important, the reforms of 1995 gave the chairs of full committees the power to appoint subcommittee members and chairs.

Select, or special, committees Temporary committees established by the House or Senate to study particular problems.

Joint committees Congressional committees that are usually permanent and consist of an equal number of members from each house.

Conference committees Temporary joint committees that are formed to reconcile differences between House and Senate versions of a bill. Such committees often play a critical role in shaping legislation.

Select, or special, committees are temporary committees established by the House or the Senate to study particular problems. For instance, in 1986, both the House and the Senate created select committees to investigate the Reagan administration's sale of arms to Iran and the diversion of funds from the sale to forces seeking the overthrow of the government of Nicaragua. There are also four permanent **joint committees,** composed of an equal number of members from each house. One of these is the Joint Library Committee, which oversees the activities of the Library of Congress. Finally, temporary **conference committees** are formed to reconcile differences between House and Senate versions of a bill. Sometimes called the "third house of Congress," conference committees are composed of members of both bodies. Because a bill may be sent to the president only if it has been passed in identical form by both houses, the conference committees often take on great importance in giving legislation its final form.

Committee Size and Membership. Questions of committee size and the number of Democratic and Republican members are settled by negotiations between the party leaders. Each house can adjust the size of its committees from session to session.

The ratio of majority to minority party members on each committee causes far more controversy than committee size. Generally, the allocations reflect the strength of each party in the full House or Senate. Although always contentious, the question of partisan ratio on committees took on added importance after the 2000 elections. With the Senate tied at 50 Republicans and 50 Democrats, the Republicans technically controlled the body because the

TABLE 10.1
Standing Committees of the House and Senate, 107th Congress (2001–2002)

Almost all of these committees have subcommittees. The number of members ranges from ten to sixty-one.

House	Number of Subcommittees	Senate	Number of Subcommittees
Agriculture	5	Agriculture, Nutrition and Forestry	4
Appropriations	13	Appropriations	13
Armed Services	5	Armed Services	6
Budget	None	Banking, Housing and Urban Affairs	5
Education and the Workforce	5	Budget	None
Energy and Commerce	6	Commerce, Science and Transportation	7
Financial Services	6	Energy and Natural Resources	4
Government Reform	8	Environment and Public Works	4
House Administration	None	Finance	5
International Relations	6	Foreign Relations	7
Judiciary	5	Governmental Affairs	3
Resources	5	Health, Education, Labor and Pensions	4
Rules	2	Indian Affairs	None
Science	4	Judiciary	7
Small Business	4	Rules and Administration	None
Standards of Official Conduct	None	Small Business	None
Transportation and Infrastructure	6	Veterans' Affairs	None
Veterans' Affairs	3		
Ways and Means	6		

Source: http://www.thomas.gov.

Constitution gives the vice president the power to break ties. But the split gave Democrats substantial power to deadlock the Senate. After weeks of negotiations, the two parties agreed to allocate an equal number of seats on committees to each party and to evenly share the money to rule the panels. Under the agreement, the Republicans were allowed to retain the chairmanships, but in cases of a tie vote on bills or nominations, either the majority or minority leader could move them to the floor for a vote.

Committee Assignments. The House and Senate rules specify that the full membership is responsible for electing individuals to committees. By custom, however, the parties make the assignments, and the chambers simply ratify their choices.

Because of the key role committees play in controlling the flow of bills to the floor of Congress, competition for places is often keen. Junior members

struggling for a desirable assignment seek allies among the senior members and among outsiders who have an interest in the committee's area. For example, in 1981, Democratic Representative Phil Gramm (now a Republican senator) enlisted the aid of fellow Texan Jim Wright (at that time majority leader) in his bid for a seat on the House Budget Committee. Wright persuaded members of the steering committee to award the seat to Gramm, though he came to regret his assistance when Gramm supported Reagan's economic policies. House Democrats pursuing a seat on the Education and Labor Committee commonly seek recommendations from organized labor.

In addition, the members' individual goals play an important part in committee assignments. Legislators concerned about re-election, whose main priority is constituent service, choose committees that serve their districts' interests. Members who want to acquire influence in the House or Senate have a different set of committee preferences. Still others may pick committees that allow them to pursue certain policy objectives.[25]

Committee Leadership. Following the principle that the parties organize Congress, chairs of committees and subcommittees are always members of the majority party in the body. Furthermore, the committee leadership reflects the **seniority system,** a tradition through which the member of the majority party with the longest continuous service on a committee becomes its chair. Similarly, the most senior member of the minority party is generally the ranking minority member.

Seniority system The tradition in which the member of the majority party with the longest continuous service on a committee automatically becomes its chair.

Prior to the 1970s, the seniority system gave extraordinary power to Democratic members from safe districts in the South, who achieved re-election easily. In the early 1970s, liberals, dissatisfied with the system, altered it by requiring the election of committee chairs and ranking minority members. The House reforms of 1995 shifted the locus of control over committee assignments by giving the party leadership more power over the selection of committee chairs. Seniority remains an important criteria, but the 107th Congress exhibited several breaks in the rule. Because the 1995 reforms that limit Republicans to six consecutive years as the chair of a committee went into effect in 2001, several committee chairs were forced to give up their positions. The rule set into motion a complicated game of musical chairs, as experienced committee chairs were forced to give up their position and seek a new committee to lead.

CRITICAL THINKING

How does the seniority rule conflict with party leadership control of Congress?

The Nonofficial Groups

Informal groups within Congress also help to shape its public policy goals. The modern era of nonofficial groups began in 1958 with the formation of the Democratic Study Group (DSG) to enhance the power of Democratic liberals. The DSG has its own whip system, publishes a newsletter to keep its members informed, and even provides its members with campaign and fundraising assistance.[26] Conservative Democrats countered with the less-organized Conservative

Democratic Forum. Not unexpectedly, the number of groups with a single-issue focus has increased significantly. Groups such as the Steel Caucus, the Rail Caucus, the Copper Caucus, and the Mushroom Caucus are linked to outside interests and often receive financial support from them.

Although these unofficial groups represent an effort to compensate for the fragmentation produced by the committee system, they have actually made things worse, for they have increased the decentralization of the House and increased the importance of single-issue politics. As Burdett Loomis noted, "While members decry the increases in single-issue politics, they have only to consider their own behavior."[27] It may be that former Speaker of the House Thomas "Tip" O'Neill was correct when he complained that the "House has overcaucused itself."[28]

In 1995 the House Republicans created a storm of controversy by prohibiting the use of public money for unofficial groups. Under the resolution passed in the early days of the 104th Congress, these unofficial groups were denied House office space, and members were prohibited from supporting the organizations out of their office expense accounts. Although this measure affected several unofficial groups (e.g., the Democratic Study Group), it had no effect on those groups funded by interest groups and industries. Caucuses remain a viable part of congressional life because they enable members to pool their resources and work on policy questions.

The Congressional Staff

At the beginning of the twentieth century, representatives had no personal staff and all the senators collectively had only thirty-nine personal assistants. By 1987, however, the number of personal assistants allocated to members had mushroomed to more than eleven thousand.[29] Although most of these assistants spend their time providing constituent service and casework, staffers also participate in the legislative process. Members of both the House and the Senate have come to rely heavily on their personal staff to conduct research, write questions to be posed to witnesses in committee hearings, write speeches, draft bills and amendments to bills, and prepare briefs on pending legislation. Moreover, much of the negotiation among members is conducted not by the members themselves but by staff assistants representing their respective employers.

In addition to the members' personal staff, more than two thousand people are assigned to the various committees and subcommittees of Congress. With little, if any, responsibility for constituent service, committee staff are involved purely in drafting legislation and conducting committee investigations. Because they provide needed technical expertise, committee staffers often play a vital role in forming policy. In fact, committee staffers often act as policy entrepreneurs, developing new initiatives and then persuading the committee to accept them.

Congress has also created three major support agencies to furnish technical advice. The staffs of the Congressional Research Service, the General

Accounting Office, and the Congressional Budget Office are responsible for providing detailed policy analysis.

With all these staff resources, Congress has become better informed on technical matters and far less dependent on the expertise of the executive branch. Moreover, individual members, faced with more complex issues and busier schedules, naturally find their staffs invaluable. But the growing staff size also has a cost. As the pool of politically relevant participants grows larger, Congress becomes further decentralized. As Senator Fritz Hollings, a South Carolina Democrat, put it, "Everybody is working for staff, staff, staff, driving you nutty, in fact. It has gotten to the point where the senators never actually sit down and exchange ideas and learn from the experience of others and listen."[30]

Having campaigned on the promise to streamline Congress, the Republicans of the 104th Congress reduced the number of staff positions by a third. Significantly, however, the reductions came solely from committee and subcommittee staff. No cuts were made in members' personal staffs. Thus the constituent service function of the members was not affected by the cuts.

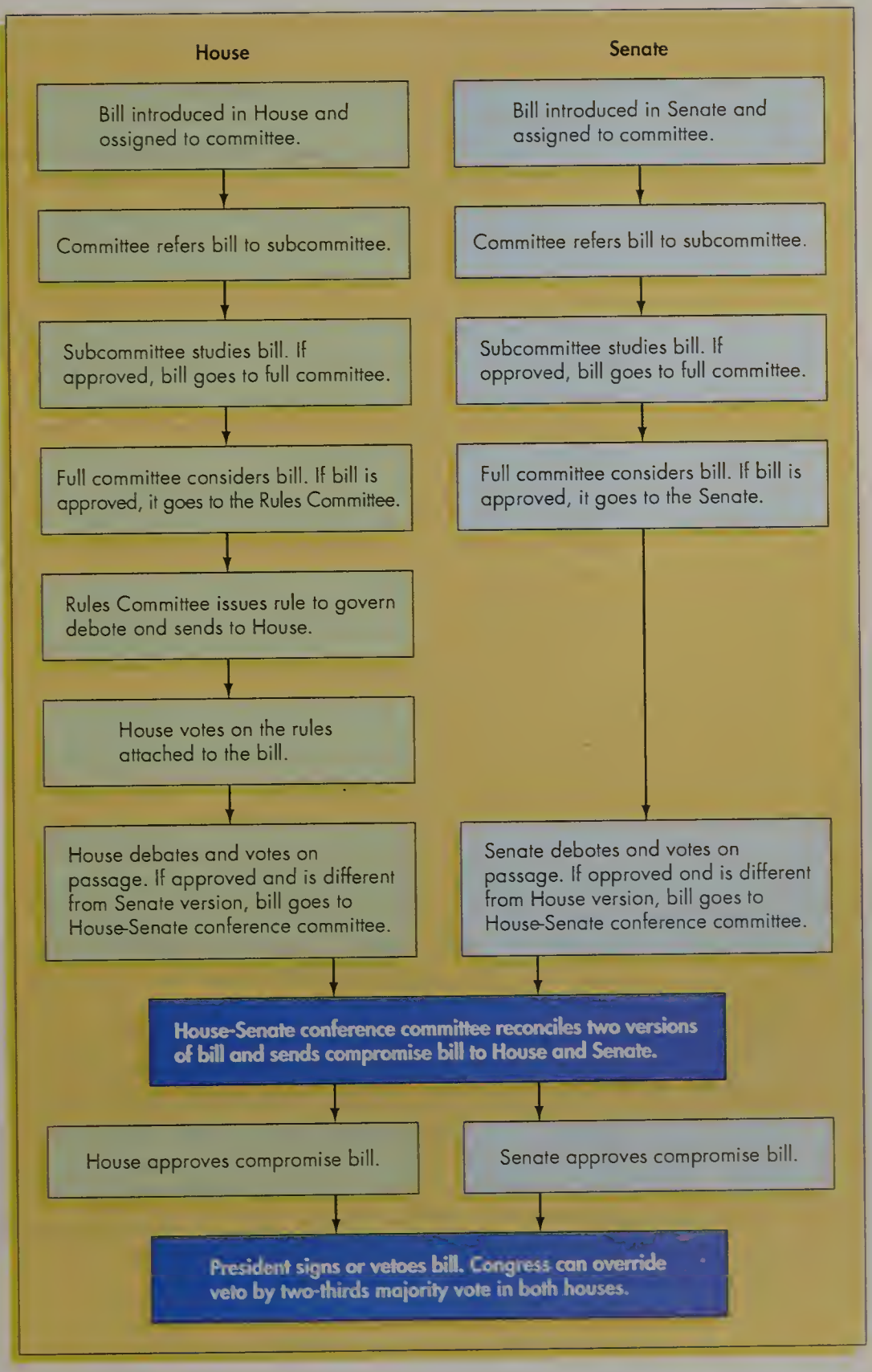
How a Bill Becomes Law

The most obvious congressional function, lawmaking, is also the function that Congress has the most difficulty performing. For those who wish to pass legislation, the congressional process is an obstacle course.[31] The maze of complex rules and multiple points of power overwhelmingly favors the opponents of legislation. Ignoring the old saying that the public should never see the making of sausages or legislation, we now will look at the making of laws. Figure 10.2 shows the process schematically.

Any member of Congress—but only a member—may introduce legislation. To aid in this important task, each house has an Office of Legislative Counsel, which assists in the actual drafting of legislation; members need only present their ideas to the counsel. Some of the bills introduced may in fact have been drafted elsewhere—by constituents, interest groups, or the presidential administration.

Regardless of a proposal's source, the formal process of introduction is the same. Representatives simply drop the proposal in a box called the "hopper." Senators hand the proposed law to a clerk for publication in the *Congressional Record.* After the initial action is taken, the bill is numbered (by order of introduction) and sent to the Government Printing Office, which makes multiple copies for future referral. An "HR" preceding the number identifies bills introduced in the House; Senate bills are marked with an "S."

FIGURE 10.2
How a Bill Becomes a Law



Committee Consideration

After a bill has been properly introduced, the Speaker of the House or the Senate's presiding officer refers it to a committee. Because both houses have elaborate rules that restrain the leaders' choice of committee, most proposed bills automatically go to the committee that specializes in the area. On occasion, however, the presiding officer may be able to choose among rival committees. Perhaps the most notable example of the exercise of this option occurred in 1963, when the Kennedy administration's civil rights bill was referred to the Senate's Commerce Committee rather than to the Judiciary Committee, which had a predominantly southern membership. In the House, however, the bill was given to the House Judiciary Committee, whose chair strongly supported civil rights legislation. If the subject is broad enough, proposed bills may need to be referred to more than one committee. However, under the rules, the Speaker may refer a bill only to one committee at a time.

When a bill reaches a committee, it is usually referred to the subcommittee that has jurisdiction in the matter. For the vast majority of bills, that is the final resting place. Woodrow Wilson best described the fate of bills in committee when he said: "As a rule, a bill committed [to committee] is a bill doomed. When it goes from the clerk's desk to a committee room, it crosses a parliamentary bridge of sighs and dim dungeons of silence whence it will never return."[32]

If the subcommittee chooses to hold hearings, then members of the president's administration, congressional colleagues, representatives of interest groups, and (time permitting) private citizens are invited to testify. Afterward, the subcommittee meets in what is called a *markup session*, in which it votes on amendments to the bill and settles on its precise language. Sometimes that process involves a line-by-line analysis of the bill, with debate on the language or intent of virtually every sentence. In other cases, the subcommittee may substitute an entirely new version of the bill. Subsequently, most bills go to the full committee; at this point, the process of hearings and markup may begin again, or the full committee may accept the subcommittee version. The full committee may also take no action, thus killing the bill, or send the bill back to the subcommittee for further work.

If the committee orders the bill reported—that is, votes to approve it—the bill is sent for consideration to the full originating body (the House or the Senate). A committee report accompanies it, explaining the bill and justifying the committee action. These reports can be crucial because for some members of Congress they may be the main source of information about a bill. Senators and representatives who are not on the committee are unlikely to have a great deal of expertise in the subject matter. Thus they often look to the committee reports for guidance.

Floor Action

When a committee orders a bill reported, it is placed on a calendar. What happens next is different in the House and in the Senate.[33]

The House Floor. In the House, the Rules Committee determines the scheduling of controversial bills that are unlikely to receive unanimous consent from the floor or bills requiring the expenditure of public funds. This committee may specify the time allocated for debate and may set limitations on amendments. The committee may, for instance, attach a rule prohibiting amendments from the floor; such a rule is known as a *closed rule.* In formulating the rules for a bill, the committee may conduct hearings of its own or kill the bill by doing nothing.

The actions of the Rules Committee with regard to a particular bill are stated in a resolution that must be approved on the House floor before the bill can be considered. Often the battle over this resolution is the most important floor action. In 1981, for instance, a fierce struggle developed over the rule for Reagan's budget cuts. A Democratic-sponsored rule would have required the House to vote on individual spending cuts separately. Republican leaders opposed it, fearing that a majority would not vote to cut popular social programs if they were separated from the larger package. With the help of conservative Democrats, Republicans managed to defeat the resolution and substitute one that permitted the cuts to be voted up or down as a whole.

Once a rule is accepted, the House can begin debate, which is strictly limited by the rules adopted. The time allotted for debate ranges from an hour or two for a noncontroversial bill to ten hours for difficult legislation. Votes on amendments, if these are permitted under the rules, are crucial because they can alter the bill sufficiently to attract or lose supporters. Once debate is over, the full House votes on the bill and any amendments that have been attached to it.

CRITICAL THINKING

Is the filibuster anti-democratic?

The Senate Floor. Because the Senate is a smaller body than the House, the floor procedures are considerably more casual. The Senate has no counterpart to the House Rules Committee. Bills come off the Senate's calendar when the majority leader schedules them. The Senate also allows its members to engage in unlimited debate. This privilege of unlimited debate can lead to a **filibuster**—a prolonged debate intended to prevent a vote on a bill and thus kill it. Filibusters can be broken, but only with difficulty, because the rule for **cloture**—or ending of debate—requires a vote of at least sixty senators to cut off the discussion. When it comes to the filibuster, no one has yet topped the performance of South Carolina Republican Strom Thurmond, who, while leading the opposition to the 1957 Civil Rights Act, held forth for twenty-four hours and eighteen minutes.

Filibuster A prolonged debate in the Senate that is intended to kill a bill by preventing a vote.

Cloture The rule for ending debate in the Senate; it requires a vote of at least sixty senators to cut off discussion.

Conference Work

Before a bill can be sent to the president, it must be passed by both houses of Congress in identical form. Usually this requirement poses little difficulty. If the last house to act on the bill makes only slight changes, the bill is generally sent back to the originating house for approval. When the two versions differ significantly, however, a conference committee is appointed to work out the differences.

If the members of this committee cannot reach agreement, the legislation may die in conference. More commonly, the committee reports a compromise bill, which must then be accepted by both houses. At that point, so much work has gone into producing the legislation that rejection of the bill and the committee report is infrequent. The bill is then sent to the president, who either signs or vetoes it.

As we noted earlier, the lawmaking process is an obstacle course studded with complex rules and multiple points of power. In fact, many of these rules reflect the original intent of the founders, which was to create a legislative system that works slowly and is not unduly influenced by the passions of a few. As it has evolved, the system is best designed for preventing the passage of legislation and so has reinforced the myth of Congress as the broken branch. Yet Congress does make the system work, and not just in small matters. One has only to think of the civil rights bills of the 1960s to recognize that Congress can and does respond when a consensus forms in society.

Influences on Congressional Voting

Members of Congress cast thousands of votes every year on a staggering array of issues. Understanding how they vote and why they vote as they do has long been a preoccupation of students of Congress. This task is made difficult because each vote represents not one choice but a set of choices. As one observer noted, "The predicament of the legislator is that every vote is a dozen votes upon as many issues all wrapped together, tied in a verbal package, and given a number of this bill or that."[34] In addition, legislators are routinely asked to vote on an incredibly broad range of subjects.

CRITICAL THINKING

Do party-line votes prove the power of the party or of the electoral constituency?

Except in selecting its leaders, Congress rarely engages in straight party-line voting. Nevertheless, the party remains the single best predictor of how a member will vote. On the average, the members support party positions on better than two out of three votes. Given the extensive party organizations within Congress, this outcome is not surprising. Of course, since different members of a party are likely to attract the same kinds of supporters, they may be voting alike more because of loyalty to these supporters than because of loyalty to their party.

Do the constituencies influence legislative decision making? The answer is difficult to determine, in part because constituents' views are not clearly expressed. When an issue arouses deep feelings, the constituency may well sway a senator's or representative's decision. In most instances, however, members of Congress receive little or no instruction from their districts. Even so, a district's majority usually exerts at least an indirect influence because most members of Congress share their constituents' views. That is why they were elected to begin with.

The threat of electoral defeat also ensures a measure of constituency influence. A single vote in Congress rarely ends a career, and a senator or representative—particularly one who has cultivated an effective home style—can

MYTHS IN POPULAR CULTURE

Good and Evil in the U.S. Senate

Among the many movies portraying the U.S. Congress, none has received the acclaim and lasting popularity of director Frank Capra's *Mr. Smith Goes to Washington*. Although released more than sixty years ago, the film is an American classic that still attracts large audiences when it appears on television. The film's appeal is founded on a strong cast of actors supporting a brilliant performance by Jimmy Stewart.

But another reason that *Mr. Smith Goes to Washington* has lasted all these years is because it also touches on widely held views about the U.S. Congress. Mr. Jefferson Smith (Jimmy Stewart), a naive young man who leads an organization of children called the Boy Rangers, is appointed to fill the unexpired term of a deceased U.S. senator. Given his inexperience and naiveté, Mr. Smith is expected to simply ratify the actions of his senior colleague from the state.

Initially, Mr. Smith behaves as expected. Awed by the Senate and his colleagues, he goes along, completely unaware that he is being used by a corrupt political machine from his home state. In fact, the idealistic Mr. Smith is surrounded by corrupt senators, interested only in being re-elected. Even his single senatorial staffer, a holdover from the previous senator, is jaded and corrupted by congressional politics. The fact that Mr. Smith has no idea of how Congress does its work is proof of his goodness; it demonstrates that he has not been debased by Washington. Mr. Smith is simply too good, too honest for Washington.

But of course, even Mr. Smith figures it out eventually. When his proposal to build a summer camp for children conflicts with the bosses' desire to build a dam, Mr. Smith takes the courageous stand. Shocked by the corruption that he sees around him, he vows to fight the bosses and stand up for the children of the nation. Unable to persuade him to go along with their plans, the bosses frame Mr. Smith by forging his signature on deeds of land that make it appear as if he plans to make a profit on the camp.

Accused of wrongdoing and disgraced before the children he championed, Mr. Smith prepares to depart from Washington without a fight. At the last minute, however, he is persuaded by his now loyal staffer to fight the corruption. What follows is a classic confrontation of good versus evil, as one man takes on the sinister forces of the U.S. Senate. Mr. Smith blocks Senate action on the dam and his own expulsion by launching a filibuster. As his speaking marathon drags on, even the decadent press corps begins to side with good. Rather than the obstruction of majority will by a minority, the filibuster is described by the movie characters as "democracy's finest show" and "democracy in action."

In the end, of course, good triumphs. Mr. Smith faints in the twenty-fourth hour of his filibuster, and the senior senator from his state, overcome with remorse, confesses to the corruption. Evil is defeated, but, according to the movie, it takes an outsider to restore goodness.

now and then take a position that is at odds with constituents' views. But some issues are a danger for every member. Few members of Congress relish votes on particularly controversial issues because such issues may in fact be very costly to their re-election efforts. Issues such as abortion and gun control may well spell defeat for members who cross their constituency, or at least the organized

elements in their constituency. Moreover, members are constantly concerned with what use future opponents may make of their floor votes. As Senator Thomas Daschle, a Democrat from South Dakota, said, "I dare say the first thing that comes to my mind in a vote is: Can it [the issue] pass the 30-second test, [and] how successful will my opponent be in applying it to a 30-second ad? It's a screen that comes up whenever there is a vote."[35] Hence few members of Congress frequently vote against the wishes of their districts.

Given the time constraints under which senators and representatives operate, no member can be fully informed on every issue. Therefore, members turn to one another for information and guidance on how to vote. Most members develop a set of colleagues with whom they are in general agreement and who can be trusted to provide honest and knowledgeable advice. These experts are often members of the subcommittee or committee in charge of the area in question. Thus, members are usually extremely well informed on the narrow range of issues with which they are familiar but heavily dependent on trusted colleagues in regard to other legislation.

Conclusion: Is Congress the Broken Branch?

We began this chapter by noting that Congress is generally perceived as the broken branch. This is not a recent perception, but rather a long-standing complaint. For instance, the nineteenth-century House of Representatives struck Woodrow Wilson as "a disintegrated mass of jarring elements."[36]

Yet individual members of Congress seem to satisfy their constituents. While bemoaning the condition of Congress in general, voters return the same members to that institution election after election. Despite the myth of Congress as the broken branch, then, voters seem satisfied with the incumbents. That situation is no accident. Incumbent members of Congress are safe because they work hard at carrying out their constituents' wishes for personal services. In that area of activity, Congress surely cannot be deemed a failure.

Congress works slowly, in part because it was designed that way. Its complex rules and maze of procedural hurdles were set up to frustrate immediate responses. George Washington's talk of cooling legislation in the Senate might well describe the entire legislative process. But the lawmaking function of Congress is also filtered through the representational function. Responding to the demands of constituents enhances the representative nature of Congress, but it also diminishes the capacity of members to engage in policymaking. Moreover, the representative function encourages members to view policy in local instead of national terms. Nevertheless, Congress is capable of fomenting great change when a nationwide consensus develops.

Summary

1. Members of Congress tend to be wealthier and better educated than the public they represent. Furthermore, Congress includes proportionately fewer minority-group and women members than the general population.

2. Despite the public's seeming dissatisfaction with Congress, incumbents are greatly favored in congressional elections. Incumbents use the opportunities and resources available to them to win the voters' trust.

3. Members of Congress perform many roles. For example, Congress is responsible for the creation of taxing and spending policies for the nation. The members are also expected to represent the interests of their constituents and oversee the actions of the executive branch.

4. As a bicameral institution, Congress is highly decentralized. The two houses of Congress have developed their own rules and internal dynamics.

5. The most powerful position in the House of Representatives is that of the Speaker of the House. Elected by the majority party, the Speaker is assisted by the majority leader and the majority party whip. Leadership of the minority party in the House falls to the minority leader and minority party whip.

6. Although the Constitution makes the vice president the presiding officer of the Senate, the majority and minority party leaders are of greater importance.

7. Most of the work of Congress is done in its committees and subcommittees. This reliance on committees and subcommittees results in decision making by highly specialized members.

8. Committee leaders are generally those members of the majority party who have the greatest seniority on the committee. In the 1970s, Congress instituted reforms that gave the majority party the right to elect committee leaders, but the seniority rule is still strong.

9. Nonofficial groups with a single-issue focus, as well as an increasing number of congressional staff assistants, have greatly added to the number of forces in the policymaking process.

10. A bill becomes law only after it has passed through a maze of complex procedures. Though they resemble an obstacle course, these rules and procedures are in keeping with the founders' intent that Congress not act in haste.

11. Members of Congress make decisions on a broad range of issues. In so doing, they take into account the desires of party leaders and constituents. The members also accept and seek out the advice of trusted colleagues who have expertise in the subjects under consideration.



Net Work

For a comprehensive look at Congress past and present, try the congressional web site Thomas **(http://thomas.gov/).** In addition to a wealth of information about the current activities of Congress, Thomas provides a set of important historical documents regarding American government.

If you want to learn more about a particular representative or senator, there are several valuable sources. The House of Representatives maintains its own web site at **http://www.house.gov.** Similarly, the Senate web site can be found at **http://www.senate.gov/.** Both of these web sites provide access to the home pages of individual

representatives and senators. Try finding the home page of your representative or one of your senators. On what committees does he or she serve? As an additional source, you might try Cap Web, the Internet Guide to the U.S. Congress (**http://www.capweb.net/**). In addition to offering access to the individual home pages, Cap Web offers a complete set of district maps, so that you can examine the electoral districts of each U.S. representative.

Are you interested in how particular house members or senators voted on an issue? Project Vote Smart (**http://www.vote-smart.org/**) explains current legislation in easy-to-understand language and reports the recorded votes in both the House and the Senate. Try following some piece of legislation as it moved through Congress. What committees dealt with the legislation? Who sponsored the bill? What were the vote totals in the House and the Senate?

CHAPTER 11

The Presidency

- The Growth of the Presidency

The First Presidents: Establishing the office
Congress Reasserts Power: A century of congressional power
The Modern Presidency: Power returns to the White House

- Presidential Roles

Chief of State: Pomp and ceremony
Chief Executive: Management powers and privileges
Chief Diplomat: Treaties, executive agreements, congressional-executive agreements, power of recognition, and appointments
Commander in Chief: War powers and restrictions
Chief Legislator: Proposals, vetoes, line-item veto, and impoundment
The Seamless Web: Interconnecting roles

- The Institutional Presidency

The Cabinet: An ineffective collective
The Executive Office of the President: OMB, CEA, and NSC
The White House Office: Two management styles
The Vice President: "His Superfluous Majesty"

- Presidential Influence

Persuading Congress: Party loyalty, lobbying, and personal appeals
Public Opinion: Going public

- Conclusion: The All-Powerful President?

MYTH & REALITY

Is the president all-powerful?

MYTH & REALITY

"Now comes the United States House of Representatives, by and through its duly authorized managers, and respectfully submits to the United States Senate its brief in connection with the impeachment trial of William Jefferson Clinton, President of the United States." With these words, the United States House of Representatives introduced to the Senate two articles of impeachment directed at President Clinton. Only the second president in our history to be impeached, Clinton, like President Andrew Johnson, survived the Senate trial. Although a Gallup poll revealed that 64 percent of the public approved of the outcome in the Senate, the episode was far from a high spot for the American presidency. The whole affair was unsuited to what many Americans consider the most powerful office in the world.

Presidents are set apart not only from average citizens but also from other leaders in our society because, for many citizens, the president *is* American government. When things go well, it is because the president is exercising leadership; when they go badly, it is because the president is weak or incapable. Somehow, if we could just get the right president—perhaps another Lincoln or Roosevelt—all would be well. Whether it is called the "textbook presidency,"[1] the "imagined presidency,"[2] or the "savior" model of the presidency,[3] that view projects the *myth of the all-powerful president.* Its imagination fueled by legends of great presidents, the public has come to believe that all of the country's problems—social, economic, and international—can be solved by the immense power available to the president. Even presidents themselves can succumb to this myth. Jimmy Carter once contended that "the President is the only person who can speak with a clear voice to the American people and set a standard of ethics and morality, excellence and greatness."[4]

In this chapter, we consider the expectations placed on presidents and the powers at their disposal. We begin by examining the evolution of the presidency, for even though the Constitution has changed little with respect to presidential power, the modern presidency is a far different institution from that in the eighteenth century.

The Growth of the Presidency

On April 30, 1789, General George Washington stood before the assembled Congress and repeated the oath of office administered by Robert Livingston. The oath completed, Washington lifted the Bible to his lips as Livingston cried out, "It is done." But just what had been done must have been a mystery to all present, for none could be sure what shape the presidency would take or what influence presidents would have. Nor did the character of the modern presidency develop in an instant. Rather, the office has evolved over the course of two centuries, and during that period the balance of power has moved back and forth between the presidency and Congress.

The First Presidents

As the first president, Washington was keenly aware that he was building a new institution and that his every act created a precedent. Although he respected the need to cooperate with others, he was careful to protect the dignity and strength of the office. Once, while on a visit to Boston, Washington was informed that John Hancock, the governor of Massachusetts, was ill and would be unable to call on the president. Believing that governors should defer to the office of the president, Washington canceled his dinner engagement at the governor's mansion and proceeded to outwait Hancock. The next day an apologetic Hancock, carried by four men, appeared at Washington's door to pay his respects.

During his presidency, Washington developed a notably broad interpretation of executive power. Although he stayed aloof from congressional politics, he was quite active in formulating legislation. Using his secretary of the treasury, Alexander Hamilton, to build congressional support, Washington successfully steered his program of economic development through Congress.

Washington also established a number of presidential roles and customs, including the practice of meeting with the heads of his executive departments as a cabinet. His response to international threats established a dominant role in foreign affairs for the president. Finally, by refusing to seek a third term, Washington eased fears that the presidency might become a monarchy; in the process, he created the precedent, not broken until 1940, of a two-term limit.

Washington's strength contrasted sharply with the weakness of his successor, John Adams. Although Adams was one of the great American patriots (during the American Revolution, he was known as the "Atlas of Independence"), his presidency was marked by failure. At odds with the opposition party (the Jeffersonians) and with members of his own Federalist party, Adams lasted only one term as president. He lost his re-election bid to Thomas Jefferson.

As the leader of the Jeffersonians (the predecessors of the modern Democratic party), Jefferson advocated restrictions on the national government. Yet as president, he enlarged the powers of the office and skillfully used his political party in Congress. During his presidency, he planned his party's legislative strategy and worked diligently to elect party faithful to Congress. By these actions, he greatly enhanced the president's effectiveness as a legislative leader. Furthermore, without consulting Congress, he doubled the landmass of the United States through the Louisiana Purchase of 1803. Jefferson's immediate successors were comparatively unsuccessful at leading their party. The so-called era of good feeling (1812—1824) was a period of congressional and one-party governance.

The Jackson Presidency. With the election of Andrew Jackson in 1828, the United States had its first president who was truly elected by the people. Until then the state legislatures had appointed most members of the electoral college, but by 1828 only Delaware and South Carolina refused to select delegates by popular vote. At the same time, the elimination of the requirement that only property owners could vote had significantly expanded the eligible electorate.

Capitalizing on his personal popularity, Jackson established a popular base for the presidency and strengthened the executive's role. He styled himself as the only representative of all the people and appealed over the heads of congressional leaders directly to the public, which supported him in confrontations with Congress. He vetoed twelve acts of Congress, more than all his predecessors combined. More important, he claimed the right to veto legislation simply because he disagreed with Congress; previous presidents had vetoed bills only when they thought them unconstitutional. Commenting on Jackson's battles with Congress, critics complained that the presidency had become an elected monarchy. The president, claimed Daniel Webster, "carries on the government; all the rest are subcontractors."[5]

Congress Reasserts Power

Although Jackson offered little in the way of policy initiatives, he profoundly influenced the office by demonstrating that a strong and independent presidency could be based on popular support. Few of his successors could apply these lessons, however. For the next hundred years, presidents, with a few exceptions, remained in obscurity.

As soon as Jackson retired, Congress re-established its power over the less flamboyant Martin Van Buren (1837–1841)—a man so famous for his political evasiveness that the noun *noncommittalism* was coined to describe his usual public stance.[6] Van Buren, a Democrat, was no match for his opponents in the Whig party. The Whig theory of presidential power held that Congress is the center of government and that the president's job is simply to execute the laws.

Van Buren was not alone in his failure to maintain an independent presidency. The years between Jackson's presidency and Lincoln's were marked by a string of remarkably mediocre presidents. Even their names are difficult to remember. The reputation of Millard Fillmore (1850–1853) illustrates the lack of power of these presidents; his only claim to fame, that he installed the first bathtub in the White House, is not even true. The one exception to this general mediocrity was James Polk (1845–1849), who annexed Texas through war with Mexico and obtained the Oregon Territory from the British by peaceful means. When he left office, the nation was half again as large as it had been when he entered it.

In Abraham Lincoln (1861–1865), however, the nation found a president of immense influence. Although Lincoln was a Republican when he was elected president, he had earlier been elected to Congress from the Whig party. As a Whig, he had continually challenged executive authority, even attacking the war with Mexico as an unconstitutional act initiated by Polk. (Indeed, Polk had provoked the Mexican army into an attack.)

On taking office, Lincoln used the powers of the presidency in new and extraordinary ways. He blockaded southern ports, called up the militia, closed opposition newspapers, ordered the arrest of suspected traitors, closed the mail to "treasonable correspondence," and issued the Emancipation Proclamation—

A President of Mythic Proportions

No president in American history more clearly symbolizes the all-powerful president than Abraham Lincoln. Here Lincoln meets with General George McClellan at the battle of Antietam.



all without prior congressional approval. Throughout the war, Lincoln did whatever he thought was necessary in order to win the war. In conducting the war, he demonstrated that in times of national emergency the American presidency possessed virtually unlimited powers.

Lincoln, like Jackson, was followed by a series of weak, readily forgotten presidents—known collectively as the Bearded Presidents—who were easily dominated by Congress. So complete was congressional control that for the next forty years all important legislation, including the decision to enter the Spanish-American War (1898), was initiated in Congress.

Only the vigorous administrations of Theodore Roosevelt and Woodrow Wilson briefly interrupted the era of congressional government. Viewing the presidency as a "bully pulpit" from which he could appeal to and educate the American public, Roosevelt skillfully used public opinion to build support for his actions. He articulated the "stewardship theory" of presidential power: that the president, as the only official elected by the entire nation, has the duty to take whatever action is necessary as long as it is not specifically forbidden by the Constitution or by law. Taking a similar view of the presidency, Wilson was the first president to propose a comprehensive legislative program.

CRITICAL THINKING

Is the president the only official capable of representing the entire nation?

The Modern Presidency

Theodore Roosevelt argued for a strong presidency, but it was Franklin D. Roosevelt who gave the office the power it now has. Confronting the Great

Depression and then World War II, the second Roosevelt rallied the American people to accept his leadership and, in the process, the legitimacy of the powerful presidency. Immediately after his inauguration in 1933, Roosevelt called Congress into special session and in the First One Hundred Days introduced fifteen major pieces of legislation. A willing Congress passed all of them. (One of the most important of these, the administration's banking bill, passed in just seven hours.)

World War II helped expand Roosevelt's power still further. The mobilization effort needed to fight a total war led to such spectacular growth in the size and authority of the federal government that the government became involved in every aspect of life. Struggling to deal with the emergency of war, Congress willingly turned to the president for policy leadership. By the end of the war, political power had dramatically shifted from Congress to the White House, and the Whig model of the active Congress dominating the passive president was dead. More important, the heroic image of Roosevelt rescuing the nation so changed the presidency that the nation came to expect action from a vigorous president as the norm. As one scholar put it, rather than being a threat to democracy, the strong executive was its "savior."[7] The argument was simple: The more power the executive had, the more good he could do.

Ironically, the "savior" quickly turned into what one critic called a "Frankenstein monster"[8] when Lyndon B. Johnson and Richard M. Nixon used their power to prosecute an increasingly unpopular war in Southeast Asia. Revelations of secret bombings of Cambodia and the Watergate scandal led to a general disenchantment with the presidency. Suddenly, presidential government seemed harmful to the republic. Many of the same scholars who had glorified the expanded presidency of Franklin D. Roosevelt began to argue that the office had grown too strong. Arthur M. Schlesinger, Jr., whose biographies of Andrew Jackson, Franklin D. Roosevelt, and John F. Kennedy had done so much to build myths around the presidency, began to warn of the dangers of the *imperial presidency*—the increased authority and decreased accountability of the presidency in the 1960s.[9]

In the wake of these concerns, leadership passed to two successive presidents who were anything but imperial. Gerald Ford assured the nation that he was "A Ford, not a Lincoln," and Jimmy Carter, with his cardigans and blue jeans, sought to reduce the pomp surrounding the president. Failing to project the image of a strong leader, both were rejected by voters, and presidential observers began to worry about the *tethered presidency*—a presidency too constrained to be effective.[10]

The election of Ronald Reagan in 1980 seemed to confirm the concerns over the tethered presidency. Elected on the promise to dismantle much of the federal government, Reagan seemed unlikely to manifest the characteristics of a strong president. His first term saw major legislative victories on tax and budget reductions, but deepening economic problems soon overshadowed these triumphs. Midway through Reagan's first term, the number of unemployed reached 11 million, and the president could command only a 37 percent approval rating in the Gallup poll.

Yet those who wrote off Reagan as another one-term president obviously misjudged the situation. Riding the wave of an economic recovery, Reagan scored a landslide victory in 1984. At the beginning of his second term, he garnered higher public opinion approval ratings than had the popular Dwight D. Eisenhower, the last president to serve two full terms. Often defying the image of a lame-duck president, Reagan took strong positions on some issues, backing them up with vetoes and threats of vetoes. However, his second term was also marred by the Iran-Contra affair—which resulted in the forced resignations and criminal convictions of some of the president's closest advisers—and a much enlarged federal deficit.

As Reagan's political heir, Vice President George Bush, in his campaign for the presidency, benefited directly from Reagan's popularity. But as president, Bush, unlike Reagan, was forced to begin his administration with both houses of Congress controlled by the Democrats. Recognizing this, President Bush called for a "new engagement" between the president and Congress, one characterized by cooperation and mutual respect. Both the invasion of Panama and the war with Iraq were perceived by the public as great successes, and Bush's popularity soared. Buttressed by approval ratings as high as 90 percent, Bush aggressively assailed Congress with a series of vetoes that Congress could not override. In his fourth year, however, the president's popular approval dropped below 40 percent as the economy suffered through a recession. As a result, Bush became another one-term president.

Although elected with only 43 percent of the popular vote, President Bill Clinton initially had the advantage of taking office with his party controlling both houses of Congress. That advantage, however, was more apparent than real. The administration did have some early successes in Congress, most notably the passage of the North American Free Trade Agreement, but the president was also rebuffed by Congress on several occasions. As Clinton fell in the polls and, after the 1994 elections, had to cope with a Republican-controlled Congress, his re-election seemed doubtful. However, he dealt with Congress skillfully and even succeeded in blaming its extremist elements for the two government shutdowns. As a result, Clinton was able to win re-election in 1996 with 49 percent of the popular vote. Despite the scandals that resulted in his impeachment, Clinton left office with an unprecedented 65 percent approval rating. But Clinton's approval ratings did not ensure continued control of the White House, as the Republicans recaptured the office with the election of George W. Bush.

Presidential Roles

Tethered or free, presidents are perceived as central to American politics. Perhaps the strongest evidence of their eminence is the variety of roles that they are expected to play. Taken together, these roles create the appearance of what has been called "the awesome burden" of the presidency. Indeed, as

one scholar has pointed out, "All that is missing is Mover of Mountains and Raiser of the Dead."[11]

Chief of State

Presidents are not just celebrities; they are the American version of royalty.[12] Lacking a royal family, Americans look to the president to symbolize their government.

As chiefs of state, presidents entertain foreign dignitaries and prominent Americans, throw out the first baseball of the season, review parades, issue proclamations, and carry out other ceremonial duties. To some, these activities may seem a waste of valuable time, but presidents view them as enhancing their prestige. Ever mindful of the value of pageantry, George Washington regularly rode through the streets of Manhattan (New York then being the nation's capital) in an elaborate carriage pulled by six cream-colored horses. On the days when he chose to ride horseback, he mounted a white steed draped in leopard skin with a saddlecloth bound in gold. Washington's flair for pomp and circumstance was such that John Adams once said of him, "If he was not the greatest President, he was the best actor that we ever had."[13]

Chief Executive

Article II of the Constitution clearly specifies that "the executive power shall be vested in a President of the United States of America" and that the president shall "take care that the laws be faithfully executed." On the surface, then, the president appears all-powerful as a chief executive. After all, no other official shares executive authority. Yet the notion that one person can manage an executive branch that has grown to some 3 million civilian employees is an illusion. Modern presidents quickly discover that management is a considerably more difficult and time-consuming function than they had imagined. Indeed, they often neglect management functions in favor of more immediate and rewarding political concerns.

Powers to Appoint and Remove. Given the president's role as chief executive, it stands to reason that he would possess enormous power to staff the executive branch. Such is not the case, however. Because the vast majority of federal employees are protected by the civil service (see Chapter 12, on the bureaucracy), there are fewer than two thousand positions that the president can fill by appointment. Moreover, many of these appointments require senatorial approval, which may on occasion be denied. The fate of President Clinton's nomination of Anthony Lake to head the CIA illustrates the Senate's power. After days of grueling questioning about his role in foreign policymaking during Clinton's first term, his personal stock investments, and his management abilities, Lake, the former national security adviser, asked the president to withdraw his nomination.

The Power to Appoint

On taking office, a new president must very quickly exercise his appointment power to fill Cabinet and other executive branch posts. President Bush chose Paul O'Neill as his Treasury Secretary (pictured on the right, being congratulated by Vice President Cheney).



Likewise, the president has limited power to remove officials—an issue on which the Constitution is silent. The president can hire and fire agency heads and others who perform purely executive functions. Officials who perform quasi-legislative or quasi-judicial functions, however, are protected by Congress from presidential discharge, although the line between purely executive functions and those that are quasi-legislative or quasi-judicial is somewhat unclear.[14]

Power to Pardon. The president's power to grant pardons and reprieves is one of the few executive powers that Congress may not limit. This power may be used to correct what the president sees as mistaken convictions or, as Alexander Hamilton put it, to "restore the tranquility of the commonwealth." President Reagan demonstrated the first of these uses when, in 1981, he granted pardons to two FBI agents who had been convicted of burglarizing the homes of Americans suspected of harboring terrorists. Reagan claimed that the agents had acted in good faith, believing that their actions were legal. In the second category, after the Civil War, President Andrew Johnson used the power to restore tranquility to a divided nation by granting full amnesty to all Confederate veterans except those guilty of treason or felonies. Similarly, President Ford justified his pardoning of Richard Nixon as necessary to shift national attention away from what he referred to as our "long national nightmare" and toward the economic problems of the nation.

Executive privilege
The right, claimed by presidents since Washington, to withhold information from Congress.

Executive Privilege. Even though the Constitution makes no mention of it, presidents since Washington have claimed **executive privilege**—the right to withhold information from the legislature. Justifying their claims either by the need for secrecy in foreign affairs or by the necessity of keeping advice confidential, presidents exercised the power without serious congressional challenge for almost two hundred years.

The issue came to a head, however, when the Nixon administration attempted to greatly expand the meaning of executive privilege. As the events of Watergate began to unfold, Nixon tried to deflect inquiry by claiming that executive privilege applied to all executive officials. At one point, Nixon even claimed the privilege for all who had worked for the executive branch in the past.

CRITICAL THINKING

On what grounds can executive privilege be justified?

The confrontation came when the Watergate special prosecutor requested tape recordings of White House conversations. The president, citing executive privilege, refused to turn over the tapes, and the special prosecutor pursued the matter in federal court. In the case of *United States* v. *Nixon* (1974), the Supreme Court ruled that presidents could rightfully claim executive privilege, but not when facing a criminal investigation.[15] In the Clinton administration, the courts further limited executive privilege by ruling that it could not be invoked to avoid or delay civil proceedings for actions taken prior to assuming the presidency.[16] Moreover, the Court made it more difficult for presidential aides to invoke executive privilege.[17] Even the president's Secret Service protectors can, in the future, be compelled to testify.[18] Thus, although the Court has recognized the need for executive privilege, it has also set limits on this power.

Chief Diplomat

According to Article II of the Constitution, the president is authorized to make treaties with the advice and consent of the Senate; to receive foreign ambassadors and ministers; and, with the advice and consent of the Senate, to nominate and appoint ambassadors, ministers, and consuls. As chief diplomat, the president plays a leading role in shaping U.S. foreign policy, though he is seldom free to do as he wishes. While President Harry Truman once claimed, "I make foreign policy," presidents have found their role as chief diplomat far more constrained than the constitutional provision suggests.

Treaties. The power to make treaties illustrates the limits of the role. A literal reading of the Constitution suggests that both the president and the Senate are to take part in all phases of the treaty process. Such was President Washington's initial understanding, but he soon changed his mind. While negotiating a treaty with the Indians, Washington appeared before the Senate and requested advice on certain provisions. The Senate, however, withdrew to discuss the matter without Washington. Angered by the Senate's refusal to engage in face-to-face discussions, Washington reversed his position.

Since Washington's time, no president has appeared before the entire Senate seeking advice on treaty provisions. Nevertheless, presidents do consult

prominent senators. As former secretary of state Dean Acheson said, "Anybody with any sense would consult with certainly some of the members of the ratifying body before he got himself out on the very end of a limb from which he could be sawed off."[19] At times, individual senators are even included in the delegation appointed by the president to negotiate a treaty. For example, the 1963 nuclear test ban treaty was negotiated in the presence of a panel of senators. In contrast, at the end of World War I, President Woodrow Wilson did not include senators in the delegation to the conference that created the League of Nations, and many observers believe that it was this oversight that angered members of both his own and the opposition party and led the Senate to reject U.S. membership in the new international organization.

Consulting leading senators is imperative because every treaty must be approved by two-thirds of the Senate before it can take effect. Even if the Senate does not reject the treaty, it can modify it in ways that the president may find hard to accept. President Carter, for instance, won the necessary Senate support for his Panama Canal treaties only after agreeing to several Senate modifications that he initially opposed.

Executive Agreements. To avoid the uncertainties associated with treaty ratification, presidents frequently turn to **executive agreements,** agreements with other nations made by the president without the Senate's consent. Such accords have all the legal force of treaties while they are in effect but, unlike treaties, are not binding on succeeding presidents.

Executive agreements
Agreements with other nations made by the president without the Senate's consent. They have all the legal force of treaties but, unlike treaties, are not binding on succeeding presidents.

Even though the Constitution does not provide for executive agreements, presidents since Washington have used them for both trivial and important matters. Because executive agreements can be made quickly and secretly, presidents use them to avoid rejection by the Senate. Thus in 1905, when Senate Democrats, fearful of foreign commitments, blocked consideration of a proposal for American operation of customhouses on the Caribbean island of Santo Domingo, Theodore Roosevelt implemented the proposal as an executive agreement.[20]

Legally, anything the president and the Senate can do through treaty can be accomplished by the president alone through executive agreement. The political reality is sometimes quite different, however, since the implementation of an executive agreement often requires congressional action. Executive agreements, for instance, generally need appropriated money, which means that both the House and the Senate become involved in the implementation.

Congressional-Executive Agreements. Presidents have also started using a method known as the **congressional-executive agreement**—an agreement (usually a trade pact) with a foreign nation negotiated by the president and then submitted to both houses of Congress for approval. By submitting the agreement to both houses, the president can win assent for the agreement while avoiding the constitutional requirement of a two-thirds vote in the Senate for treaty ratification. (Congressional-executive agreements need only a majority vote in

Congressional-executive agreement
An agreement with a foreign nation negotiated by the president and then submitted to both houses of Congress for approval.

CRITICAL THINKING

Should presidents be prohibited from concluding congressional-executive agreements?

each house for approval.) President Clinton successfully used this procedure to win approval for the North American Free Trade Agreement (NAFTA), which probably would not have received the necessary votes in the Senate had it been submitted as a treaty. The future utility of these agreements is, however, in doubt, because statutory authority placing these agreements on a fast track through both houses has expired. Without the fast-track legislation, congressional-executive agreements lose much of their attraction for presidents because they may become bogged down in either house.

Power of Recognition. As an element of their constitutional power to receive foreign ambassadors and ministers, presidents possess the power of recognition. The simple act of receiving a foreign diplomat signifies the official recognition of the sponsoring government. As one observer noted, "Throughout the entire course of our national history the President has performed dozens of acts of recognition of new governments without consulting, or being expected to consult, Congress."[21] Thus President Washington granted recognition to the new French Republic without consulting Congress. Similarly, within hours of Soviet President Mikhail Gorbachev's resignation, President Bush extended recognition to Russia and five other republics of what had been the Soviet Union.

Diplomatic Appointments. A final aspect of the president's role as chief diplomat is the power to make diplomatic appointments. According to Article II of the Constitution, the president "shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls." By and large, the Senate automatically approves such nominations, allowing the president to fill diplomatic posts with people who share his views. On occasion, however, members of the Senate delay and even obstruct a confirmation as a way of expressing displeasure with administration policy. In reaction to Nixon's efforts to normalize relations with the People's Republic of China, several senators used confirmation hearings to block the administration's initiative. Nevertheless, David Bruce and George Bush, Nixon's liaisons to Beijing, were eventually confirmed.

Commander in Chief

Of all the president's roles, the most controversial is that of commander in chief. Under the provisions of Article II of the Constitution, the president is the "Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called in the actual service of the United States." The Constitution, however, clearly assigns the power to declare war to Congress, not to the president. Alexander Hamilton, in "Federalist No. 69," stressed this division of responsibilities when he said of the role of commander in chief, "It would amount to nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the

Commander in Chief

As commander in chief, the president exercises ultimate control over the armed forces personnel. Pictured here is President Harry S Truman meeting with General Douglas MacArthur, who was then commander of U.S. forces in Korea. A year after this picture, Truman demonstrated the power of the president by relieving MacArthur of his command.



confederacy." Thus, the president was to command the troops once they were committed to battle, but Congress was to make the decision to wage war.

Although the founders restricted the role of commander in chief, presidents have come to view this power quite expansively. In fact, presidents have regularly committed troops to action without asking Congress to formally declare war. Usually these actions have been small in scale, as when Jefferson sent ships against the Barbary pirates in 1805. Sometimes, however, presidents have unilaterally embarked on major war efforts. Convinced that he possessed all the powers necessary to win the Civil War, Lincoln undertook a series of extraordinary actions that included the blockade of southern ports, the expenditure of $2 million from funds not appropriated by Congress, and the drafting of 300,000 militiamen. All of this was done without explicit statutory authorization, although Congress did later approve most of the president's actions.

CRITICAL THINKING

What is the proper role of the president as commander in chief?

In the period preceding America's entry into World War II, Franklin D. Roosevelt issued several orders of doubtful constitutionality. The most famous of these was his "shoot at sight" order given to U.S. naval vessels transporting military material to Great Britain. Roosevelt's directive, issued without congressional approval, empowered U.S. naval forces to fire at German submarines even though the United States had not yet entered the war. A formal declaration of war did not come until three months later, after the attack on Pearl Harbor.

Roosevelt's successor, Harry S Truman, went a step further in exerting presidential power when he ordered U.S. troops to repel an attack on South Korea by North Korean troops. On learning of the North Korean assault, Truman did not seek a congressional declaration of war but immediately

committed thousands of American soldiers to combat in what was called a "police action." Truman moved with such speed that his order to the troops preceded both South Korea's and the United Nations' requests for intervention. Later, the administration justified this action as necessary to fulfill the U.S. commitment to the United Nations. However, a State Department publication of the time noted that the dispatching of military forces was really based on the "traditional power of the president to use the Armed Forces of the United States without consulting Congress."[22]

Presidents took over the power to make war because Congress and the public, particularly in the face of the perceived Soviet threat during the Cold War, let them do so. Even though specific presidential actions at times generated controversy, Congress was willing to surrender its constitutional authority to the president. Not until the U.S. involvement in Vietnam divided the nation did Congress begin to reassess its own role.

Johnson's and Nixon's continuation of that war led Congress and the public to question this presidential power. Yet the initial commitment of American military forces to Vietnam had followed a familiar pattern of executive leadership and congressional docility. In August 1964, Johnson reported to Congress that the USS *Maddox* had been attacked while patrolling in international waters off the coast of North Vietnam. At the president's request, Congress responded to the event by passing, with only two dissenting votes, the Gulf of Tonkin Resolution, which authorized the president "to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression." Thus, with little knowledge of the actual events and only nine hours of debate, Congress provided the president with a blank check to increase American involvement as he saw fit.

Nine years after the Gulf of Tonkin Resolution, Congress moved to limit the war-making powers of the president by passing the War Powers Resolution of 1973. Enacted over Nixon's veto, the War Powers Resolution provided that the president could send troops into hostile territory for a period not to exceed sixty days (Congress can provide a thirty-day extension). If within that time Congress does not approve the actions or if by resolution it votes to withdraw the troops, they must be removed. Another important provision of the resolution requires the president "in every possible instance" to consult with Congress before dispatching troops into hostile or potentially hostile situations.

Years after its enactment, the effectiveness of the War Powers Resolution remains questionable. In 1982, President Reagan detailed a "peace-keeping" force of marines to Lebanon. Initially, Reagan refused to acknowledge the validity of the resolution and therefore did not formally notify Congress. One year after the introduction of the marines, however, the president and congressional leaders worked out a compromise that allowed the troops to stay in Lebanon for eighteen months on the condition that the president recognized the legitimacy of the resolution.

Reagan thus became the first president to invoke the resolution, but only in this one instance. In 1983, he informed Congress about the invasion of Grenada

after it was over, and late in his term he refused to invoke the resolution in his decision to provide U.S. naval escorts for foreign ships operating in the Persian Gulf, even though these ships often engaged in hostilities. Similarly, although George Bush informed Congress of the 1989 invasion of Panama, he refused to acknowledge the legitimacy of the War Powers Resolution. Some members of Congress objected to Bush's refusal to invoke the resolution, but the quick collapse of armed resistance and the evident public support for the invasion stilled congressional resistance.

Most telling of all, however, is the insignificant role that the War Powers Resolution played in the war with Iraq. Following the Iraqi invasion of Kuwait, Bush deployed troops to Saudi Arabia without informing Congress. As the mission changed from defending Saudi Arabia to driving Iraq out of Kuwait, some members of Congress began to protest. Bush eventually requested and received congressional authorization for his actions, but only after he became convinced that he had strong support in Congress. By joint resolution in January 1991, Congress approved what amounted to a declaration of war when it authorized the president to use "all means necessary" to force Iraq out of Kuwait. Neither Congress nor the president, however, invoked the War Powers Resolution, and the president claimed, even as Congress was voting on the joint resolution, that he needed no congressional authorization. For some analysts, the minor role played by the War Powers Resolution in the Gulf War suggests that it is no longer viable.[23]

Indeed, President Clinton paid little heed to the resolution in his planned invasion of Haiti in 1994. Claiming that presidential power was sufficient, Clinton, without congressional authorization, directed the army's Eighty-second Airborne Division to invade. As it turned out, negotiations with Haitian leaders resulted in a last-minute compromise. The assault unit en route to Haiti was ordered back and an invasion of the island by force was avoided, although more than eleven thousand troops were peacefully landed on the island. Similarly, Clinton refused to invoke the resolution when deploying troops in peacemaking activities around the world, such as in the 1999 Kosovo conflict.

Chief Legislator

These days, the mass media, the public, and even members of Congress look to the president as a kind of grand legislator who initiates public policy and then guides it through Congress. As soon as they take office, presidents are expected to formulate and present a well-defined legislative program that promises to solve all the problems that ail the nation. As the chairman of the House Foreign Affairs Committee told an Eisenhower administration official in 1953, "Don't expect us to start from scratch on what you people want. That's not the way we do things here. You draft bills and we work them over."[24]

These assumptions would suggest that the president possesses broad legislative powers, but such is not the case. Article II of the Constitution gives the

president only four rather narrow legislative duties: (1) to "convene both Houses, or either of them" in special sessions; (2) to adjourn Congress if the two houses cannot agree on adjournment; (3) to "from time to time give Congress Information of the State of the Union"; and (4) to recommend such measures "as he shall judge necessary and expedient." In addition, Article I arms the president with a veto.

The president no longer uses his powers to convene and adjourn Congress, mostly because of the extended length of the legislative year. Congress was last called into special session on July 26, 1948—the day turnips are planted in Missouri. President Truman barraged this so-called Turnip Congress with one reform proposal after another. When, as expected, Congress failed to act, Truman had the issue he needed for his 1948 campaign. Running against the "do-nothing, good-for-nothing" Eightieth Congress, Truman defeated his Republican opponent, Thomas E. Dewey, and scored the biggest political upset of the century.

Recommending Legislation. The weak presidents of the 1800s offered Congress few specific policy proposals for fear of appearing to meddle with the legislative process. Modern presidents show no such reluctance, and this attitude certainly contributes to the myth of their unlimited power. The State of the Union message delivered each January illustrates the change in presidential dealings with Congress. During the 1800s, presidents typically offered nothing more than a routine report on the work of the previous year. Today this message is a major political statement addressed to the entire nation. The president exalts the administration's achievements and presents legislative goals for the coming year. Carefully crafted to hold the attention of the radio and television audience (a detailed written report is provided a few days after the oral message), the contemporary State of the Union message gives the president an opportunity to mobilize congressional and public support.

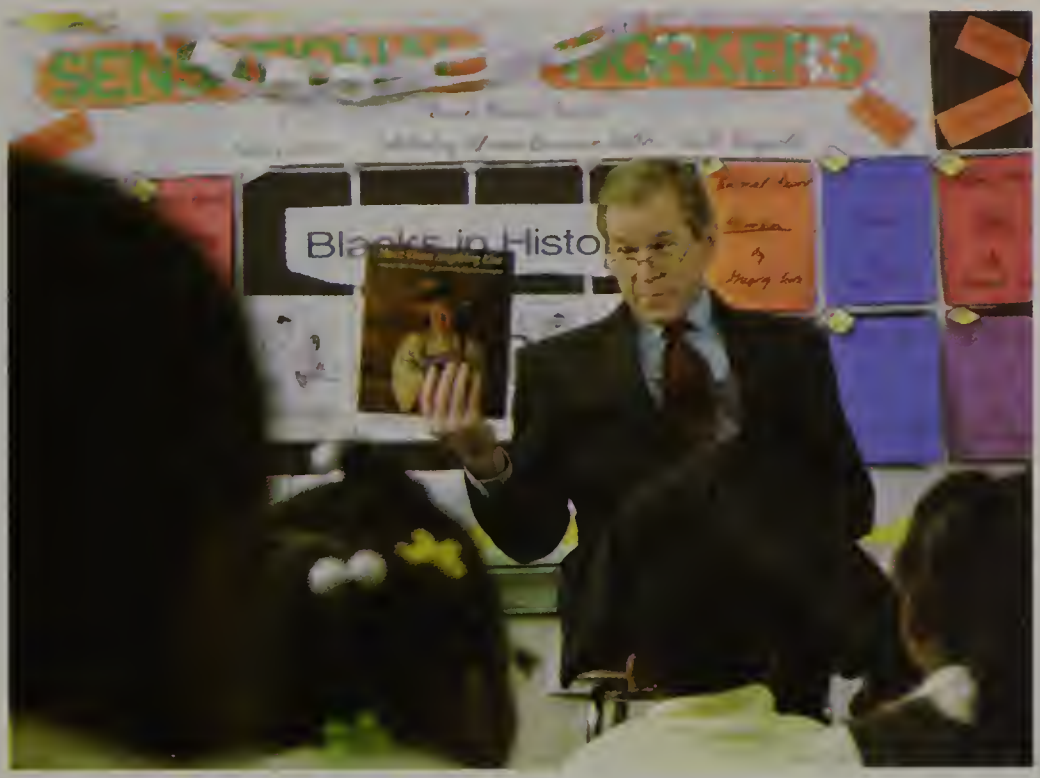
The president presents legislative proposals in less conspicuous ways as well. Numerous statutes require the president to submit detailed reports and even specific legislation. Each year, for instance, the president, as directed by the Budget and Accounting Act of 1921, presents a proposed federal budget for congressional consideration. Similarly, the president reports annually on the nation's economic condition, as required by the Employment Act of 1946.

As you will soon see, initiating legislation and mobilizing sufficient support to secure its passage are two different matters. Members of Congress expect presidential initiatives; they even demand them. That does not mean, however, that the president's program will pass.

The Veto Power. The president's ultimate weapon is the veto. After passing both houses of Congress, bills are submitted to the White House for the president's signature. A presidential signature is not necessary for a bill to become law, however. If the president fails to act within ten days of receiving the bill (Sundays excepted), the bill becomes law without presidential approval.

A Focus on Education

During his presidential campaign, George W. Bush promised to be the "Education President," vowing to recommend laws to reform the nation's education system.



Pocket veto A decision by the president not to sign a bill during the last ten days of a term, effectively killing the bill.

During the last ten days of a session, the president's failure to sign has the opposite effect: It kills the bill. The action, known as a **pocket veto,** is particularly effective because Congress, having gone out of session, has no way to fight back. When presidents exercise their ordinary veto power by sending bills back to the originating house, these vetoes can be overridden by a vote of two-thirds of those present in both houses.

In practice, Congress overrides few vetoes, giving presidents a substantial advantage. Nixon's veto of the War Powers Resolution at the height of the Watergate scandal shows how hard it is for Congress to muster its forces for an override even when a president is in disgrace. Though the scandal had seriously undermined the president's public support, the House was able to override his veto by only a four-vote margin.

Because Congress succeeds in overriding vetoes so rarely, presidents can wring concessions from it through the threat of a veto. In such instances, the House and Senate drop provisions that run counter to White House priorities and sometimes even withhold entire bills rather than face certain veto. But to make the threat credible, the president must occasionally use the veto. At one time Franklin Roosevelt is said to have pleaded with his staff to "give me a bill that I can veto" so that Congress would be convinced of his willingness to use this power.[25]

In recent years, presidents have complained that the veto power is too blunt an instrument to prevent wasteful spending. Since the president must sign or veto the entire bill, Congress has often attached **riders** (provisions) opposed by the administration to a bill that the president wants. When this happens, the president must either accept the objectionable parts or veto the entire bill. In most cases the president signs the bill.

Riders Provisions that Congress knows the president opposes but that Congress attaches to bills the president otherwise desires.

Line-Item Veto. After years of debate, Congress finally passed the Line Item Veto Act of 1996, giving the president the **line-item veto:** the power to veto portions of a bill while signing the rest. Under the terms of the act, the president was empowered to sign a bill but to strike out individual spending provisions. The president was also given the authority to cancel any tax breaks that applied to a hundred or fewer taxpayers. Congress could restore the provisions by passing a bill disapproving the cuts, but the president was allowed to veto that legislation, forcing Congress to override that veto by a two-thirds vote.

Line-item veto The power to veto portions of a bill but sign the rest of it. The president was given this power in 1997, but the act giving this power was ruled unconstitutional.

Two months after the bill became effective, President Clinton used the line-item veto to cancel a spending provision and two portions of a tax bill giving special relief to small groups of taxpayers. But Clinton's use of the line-item veto was immediately challenged in court. In the 1998 case of *Clinton* v. *New York*, the Supreme Court ruled the act unconstitutional. According to the Court, the act violated the presentment clause of the Constitution, which requires that a bill be passed by both houses of Congress in exactly the same language and then sent to the president for signature or veto. The Court reasoned that allowing the president to veto a portion of a bill was to allow the president to create a different law, one not passed by either the House or the Senate. If Congress wanted to create a new procedure, the Court said, it must do so by constitutional amendment.

CRITICAL THINKING

What effect would giving the president a line-item veto have on the balance of power between the executive and legislative branches?

Impoundment. Since the Line Item Veto Act did not pass constitutional muster, presidents are left to fashion a weak version of the line-item veto by **impounding** (withholding) funds appropriated by Congress. As far back as Jefferson, presidents have claimed the right to impound funds, either by deferring spending to some later date or by forbidding agencies to spend the money. Jefferson postponed spending $50,000 on gunboats in 1803 so that he could purchase a more advanced model the following year.

Impoundment Withholding by a president of funds that have been appropriated by Congress for a bill. Used in place of a line-item veto.

Traditionally, impoundment power has been used cautiously to avoid confrontation with Congress; in most cases the money was eventually released. Richard Nixon took impoundment further than any previous president had done. After failing to get Congress, which was controlled by the Democrats, to agree to cut spending, Nixon simply impounded appropriated funds, arguing that he had a right not to spend money that he had not requested. Nixon used the technique to eliminate whole programs that he disliked. By signing the bills that created the programs but refusing to spend the money to implement them, he fashioned a veto that could not be overridden. His strategy was more than a method of controlling spending: it was a means of controlling Congress.

CLOSER TO HOME





The View from the Governors' Mansions

As the governor is the chief executive of a state, it may be tempting to view that office as analogous to the office of president, but on a smaller scale. The analogy breaks down, however, when the legal and constitutional authority that governors have is examined. When it comes to gubernatorial power, expectation and reality are often far apart.

The nation's first governors, who commanded broad powers, were representatives of the British Crown—except in Rhode Island and Connecticut, where they were elected by the people. Colonial governors commanded the armed forces, appointed judges as well as most other officials, vetoed legislation, and even convened and dissolved the legislature. Indeed, the powers of the governors became a focal point of antiroyalist protests.

Not surprisingly then, the first state constitutions formulated after the country had gained independence constrained executive authority. Five of the original states created plural executives, with the governor being simply the presiding officer over an executive council. Only two of the original state constitutions (those of New York and Massachusetts) granted the governor a veto, and all but three limited the governor's term to one year, often without the possibility of succession. Frequently, too, governors were appointed by the legislature rather than elected. The northern states tended to create more powerful governors than the southern states, but weak governors were the rule throughout the nation.

When the Jackson presidency revived executive authority, governors benefited as well. State constitutions began to expand executive power. Many states lengthened the term of governors, restored the veto power, and, most important, provided for elected chief executives. Slowly, governors began to emerge from the shadows of state legislatures. But the era's emphasis on the election rather than appointment of public officials (characterized by the long ballot) impeded gubernatorial power. Surrounded as they were by other administrative officials who were also elected statewide, governors often lost control over their own administrations.

Today's governors generally enjoy substantial advantages over those who served only a few decades ago. For instance, in all but one state, gubernatorial terms are now four years. (The exception is New Hampshire, where the governor's term is two years.) Furthermore, all states except Virginia allow governors to be re-elected. Most states limit the governor to two consecutive terms, but some, like Texas, do not restrict the length of service.

In forty states, the governor has full responsibility for proposing the budget, and, to the envy of most recent presidents, forty-one states have given the governor some version of the line-item veto.

Nevertheless, modern governors are still constrained by the number of elected officials serving in the executive branch. The governor is the sole elected executive official in only three states: Maine, New Hampshire, and New Jersey. North Dakota, on the other hand, elects twelve officials statewide. Coordinating activities is difficult in an administration in which there are many elected officials, but it is even more complex when, as is true in several states, only the governor's time in office is restricted. In North Carolina, for instance, the governor can serve only two consecutive terms, whereas the secretary of state, the treasurer, the attorney general, and the heads of four major departments face no limits on consecutive terms of service. Under these conditions, entrenched executives often view the governor as a temporary interloper.

Most troubling to some governors is their relationship to the lieutenant governor. In nineteen

states, the governor and lieutenant governor are elected separately. This often creates difficulties, as the two officials may disagree on significant policy questions. Former Democratic governor of Arkansas Jim Guy Tucker, for one, discovered the pitfalls of leaving the state in the hands of an elected lieutenant governor. While Governor Tucker was on a medical visit to Minnesota, Lieutenant Governor Mike Huckabee, a Republican, signed a Christian Heritage Week proclamation that Tucker had previously rejected.

Yet clearly, governors' power in American politics is rising. The fact that three of the last four presidents had been governors indicates the newfound respect the office carries. Still, most governors and many observers worry that the office is not equipped to perform the demanding tasks of modern state governments. Reform efforts aimed at modernizing gubernatorial authority will continue as the states take on responsibilities previously borne by the national government.

Sources: Thad L. Beyle, "The Executive Branch: Organization and Issues, 1992–93," in *The Book of the States*, vol. 30 (Lexington, Ky.: Council of State Governments, 1994); and Larry Sabato, *Goodbye to Good-time Charlie: The American Governorship Transformed* (Washington, D.C.: Congressional Quarterly Press, 1983).

Congress responded by limiting the president's impoundment power. In the Budget and Impoundment Control Act of 1974, it set forty-five days as the maximum time that funds could be impounded. If during that time Congress did not pass a new act—a rescission bill (as in *rescind*, or repeal)—to cancel the spending, the funds must be spent.

The Seamless Web

For the sake of easier discussion, we have partitioned presidential responsibilities into distinct roles. Yet presidential activity is not so neatly divided. In fact, the various roles form a "seamless web" of endless combinations, and doing well in one role may be helpful, or indeed essential, to performing another.[26] For instance, successful performance as chief of state can often benefit a president in other roles. Similarly, when diplomatic actions involve the threat or use of force, the distinction between chief diplomat and commander in chief may all but disappear.

The Institutional Presidency

According to the standard organizational charts reproduced in textbooks, the president is the boss of some 3 million civilian employees—the largest administrative organization in the country. Obviously, no single person can control an organization of that size, yet that is exactly what is expected of presidents. But

the president does not perform the task alone, for the modern president is surrounded, perhaps even engulfed, by layers of presidential advisers, known collectively as the institutional presidency.[27] Included in that group are members of the cabinet and of the Executive Office of the President, the White House staff, and the vice president.

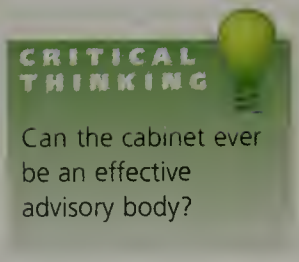
The Cabinet

The original advisory group is the cabinet. Not provided for in the Constitution, the cabinet by tradition comprises the heads of the major executive departments and other officials whom the president designates. George Washington created the cabinet by meeting frequently with his attorney general and the secretaries of state, treasury, and war. (James Madison gave those meetings with Washington the title of the "president's cabinet.") The modern cabinet consists of the fourteen department heads, the ambassador to the United Nations, and the director of the Office of Management and Budget. In 1996, President Clinton elevated the director of the Federal Emergency Management Agency to the cabinet.

As a unit, the cabinet has seldom functioned as an effective advisory body for the president. Because it is not provided for in the Constitution, its role in decision making is defined by the individual presidents, who rarely find it useful. Many presidents have undoubtedly found themselves in the position of Lincoln when he asked his assembled cabinet for advice. As Lincoln went around the table, each member voted against the president's position. Undisturbed, Lincoln announced, "Seven nays and one aye; the ayes have it."

Most candidates for the presidency have high hopes for the cabinet and promise to revitalize it if elected. Early in the first term, there is usually a great flurry of cabinet meetings, but the president soon grows weary of that approach. Acting on his promise to create a strong cabinet, Carter held sixty such meetings during his first two years in office. By the spring of 1979, he was so disenchanted that he asked all of his cabinet secretaries to resign. (He accepted four of the resignations.)

In 1980, Reagan promised to restore cabinet government. Because Reagan attached great importance to the budget, he added the director of the Office of Management and Budget to the cabinet. Even this could not prevent the inevitable disillusionment. By the end of Reagan's first year in office, cabinet meetings had become largely ceremonial events, with policy developments coming out of the White House.



Even though collectively the cabinet does not often act as an effective advisory body to the president, its members may perform important advisory functions. In any cabinet, there are likely to be individuals who are close to the president. (John F. Kennedy's reliance on his brother, Attorney General Robert Kennedy, is an obvious example.) By virtue of the departments they head, members of what Thomas Cronin calls the "inner cabinet" (the attorney general and the secretaries of state, defense, and the treasury) are most likely to serve as important counselors to the president. The secretaries of the clientele-oriented

agencies (that is, the health and human services, education, labor, housing and urban development, the interior, agriculture, commerce, transportation, energy, and veterans affairs) generally constitute a kind of "outer cabinet" whose members often have little direct contact with the president.[28] Indeed, the pressures to represent the interests of their clientele often put secretaries of these departments at odds with the president.

The Executive Office of the President

Executive order A rule or regulation issued by the president that has the effect of law.

In 1939, the President's Commission on Administrative Management reported: "The President needs help." Acting on the commission's recommendations, Franklin D. Roosevelt issued an **executive order**—a rule or regulation that has the effect of law—creating the Executive Office of the President (EOP). The EOP is not so much an office as an umbrella for a hodgepodge of organizations performing a wide variety of tasks for the president. Currently, it is composed of ten separate organizations, the most important of which are the Office of Management and Budget, the Council of Economic Advisers, and the National Security Council.

The Office of Management and Budget. The Office of Management and Budget (OMB), until 1971 known as the Bureau of the Budget, is the largest of the organizations within the Executive Office of the President. Although the OMB was originally viewed as a professional organization producing independent analysis, it has in recent years become an institutional advocate for the president's initiatives, a status that often puts it in direct conflict with other departments, particularly those that compose the "outer cabinet." The OMB's primary function in recent years has been to prepare the president's budget for presentation to Congress each January. The departments and agencies of the executive branch each submit their budget requests to the OMB, which screens these requests for fidelity to the spending priorities and impact on the economy. Because no agency can request appropriations from Congress without clearance from the OMB, the director of the office, who is appointed by the president with senatorial confirmation, serves as an important means of controlling the budget and making policy through budgetary power.

In addition to its budgetary responsibilities, the OMB routinely reviews all legislation proposed by the executive departments and agencies to make sure that the proposals are consistent with the president's program.[29] Agencies proposing laws and regulations with projected costs of $100 million or more must justify the expense. The OMB cannot reject a proposal on the basis of such a cost-benefit analysis, but it can recommend that the president do so. Occasionally, the OMB even conducts cost-benefit analyses on its own. Although these procedures are helpful in evaluating the effectiveness of new programs and regulations, they heighten tension between the departments and the Executive Office of the President.

Advising the President

Modern presidents are surrounded by layers of advisers who constitute the institutional presidency. However, few presidential advisers have been more influential than Robert Kennedy, shown here meeting with President Kennedy, whom he served as attorney general. Robert Kennedy also served as his brother's closest confidant on a variety of issues not directly related to the Department of Justice.



The Council of Economic Advisers. Legislated into existence by the Employment Act of 1946, the Council of Economic Advisers (CEA) consists of three members, generally professional economists, appointed by the president with senatorial confirmation. Its small but highly competent staff advises the president on the full range of economic issues: unemployment, inflation, taxes, federal spending levels, and the value of the dollar abroad. The council also prepares an annual report that contains analyses of current economic data and economic forecasts. Given its wide-ranging responsibilities, the council often finds itself competing for influence in economic policymaking with the director of the Office of Management and Budget, the chairman of the Federal Reserve Board, and the secretaries of the treasury, commerce, and labor.

The National Security Council. Created by the National Security Act of 1947, the National Security Council (NSC) advises the president on foreign and defense policy. By statute, the NSC consists of the president, the vice president, and the secretaries of state and defense. In addition, the heads of the Central Intelligence Agency and the Joint Chiefs of Staff are statutory advisers. The president may also request the attendance of other officials.

The role of the NSC depends greatly on the president's preference. President Eisenhower met weekly with the council, but succeeding presidents have preferred to rely on informal groups of advisers and the special assistant for national security affairs. Originally, the job of special assistant for national security affairs was little more than the secretary of the NSC. But President Kennedy, in order to limit his dependence on the State Department, gave greater authority to McGeorge Bundy, the special assistant, encouraging him to create a "little State Department." President Nixon's special assistant, Henry Kissinger, using an enlarged staff and his considerable political skills, soon eclipsed Nixon's secretary of state, William P. Rogers, as foreign policy adviser to the president. Ultimately, Rogers resigned, and Kissinger took on the second job as well.

During Reagan's second term, the National Security Council became the subject of controversy over its direction of undercover operations in Iran and Nicaragua. In an effort to secure the release of Americans held hostage in the Middle East, NSC employees arranged for the sale of weapons to Iran. Profits from these sales were then diverted to Contra rebels attempting to overthrow the government of Nicaragua, despite a congressional ban on such aid. In this instance, rather than serving as an advisory body, the NSC took on policy implementation.

The White House Office

CRITICAL THINKING

What have been some of the consequences of the growth of EOP agencies?

Technically, the White House Office is part of the Executive Office of the President, but in an important sense the two organizations are separate. The White House Office is composed of staff members who are located in the White House and serve the president's political needs. Smaller than the Executive Office of the President, it is nevertheless a sizable organization in its own right—for example, in the Clinton administration, it employed more than four hundred people. The White House Office includes assistants, special assistants, counselors, special counselors, and consultants with varying titles who function almost totally in the service of the president. Originally, the staff was limited to coordinating executive branch activities, but increasingly presidents, frustrated by their inability to control the bureaucracy, have relied on the White House Office to develop and implement policy initiatives. Indeed, cabinet secretaries, much to their chagrin, often find that policies affecting their departments are developed in the White House Office.

The actual structure of the office depends on the president's organizational preferences. Some presidents have favored a rather loose structure, in which several aides report directly to the president. Sometimes referred to as the "wheel," this highly personalized approach is designed to assure the president access to information. The best-known exponent of this organizational style was Franklin D. Roosevelt, who often assigned the same task to different aides. The fierce competition among his aides, each wanting recognition from the boss, maximized the amount of information available to the president and allowed him to extend his influence.

Although valuable as a means of gaining information, the wheel may create confusion and conflict among staff members, creating the impression that the president cannot manage his own office. Carter's early efforts to implement the wheel style of organization led to public battles among his aides and contributed to his image as an ineffectual leader. On the other hand, Reagan's use, in his first term, of a modified version of the wheel proved generally successful.

Other presidents have favored a tight structure, with staff responsibilities and reporting procedures clearly detailed. Under this organizational style, which resembles a pyramid, only one or two key aides have access to the president. Eisenhower, with his military background, preferred this type of arrangement, delegating much authority to his chief aide, Sherman Adams. Nothing could come to the president unless it was initialed by Adams. Carrying the pyramid style a step further, Nixon used his chief of staff, H. R. "Bob" Haldeman, and his domestic adviser, John Ehrlichman, to seal him off from the rest of the government. Haldeman had such tight control over the president's daily schedule that not even members of the president's family could see him without Haldeman's permission.

Pyramid structures can reduce the president's burden, allowing concentration on those issues that truly require the president's time. But the relief may come at some cost. The top aides may limit their communications to what the president wants to hear, cutting off dissenting viewpoints. And they may make important decisions before the questions reach the president. As two critics have observed, "presidential assistants can become assistant presidents."[30]

The Vice President

Benjamin Franklin once suggested that the vice president be called "His Superfluous Majesty," and Daniel Webster, saying that "he did not propose to be buried until he was already dead," refused to accept nomination for the office.[31] Although fourteen vice presidents have later become president, esteem for the office has never been high. The reason rests with the Constitution, which provides the vice president with little to do. The vice president's only constitutionally prescribed task—presiding over the Senate—offers little real power, except in the rare case of a tied vote. The vice president has no role in the day-to-day business of that body.

CRITICAL THINKING

What role was originally intended for the vice president?

The vice president does, of course, become president if the president dies in office, resigns, or is impeached and removed from office. Furthermore, since the adoption of the Twenty-fifth Amendment, the vice president can assume the presidency if the president decides that he is disabled, or if the vice president and a majority of the cabinet declare the president to be disabled. For instance, before undergoing cancer surgery, President Reagan wrote a letter empowering Vice President George Bush to take over the functions of the presidency while Reagan was under the anesthetic.

Because the Constitution does not specify the vice president's duties, they are determined by the president. Typically, presidents send their vice presidents

to advisory panels and ceremonial functions that they themselves want to avoid. Perhaps the most striking example of a distant relationship between a president and a vice president was provided in 1945. Although it had been known for months that President Roosevelt was dying, Truman was not briefed on the existence of the atomic bomb until after he became president, a mere four months before he made the decision to use it.

In part, presidents have been reluctant to delegate too much power to their vice presidents for fear of creating a political rival. Generally, a vice-presidential candidate is chosen with an eye to drawing additional supporters to the ticket; thus, the vice president is a potential competitor for the limelight. The vice president is also a constant reminder of the president's mortality. Indeed, Lyndon Johnson likened the vice president to "a raven hovering around the head of the president."[32]

Recently, however, presidents have delegated more responsibilities to their vice presidents. Carter signaled the change by allowing his vice president, Walter Mondale, to influence the selection of several high officials in the administration. Presidents since Carter have continued to give their vice presidents expanded responsibilities and greater visibility. George W. Bush quickly made it apparent that his vice president, Dick Cheney, would have substantial and wide-ranging responsibilities in the administration.

Presidential Influence

To those outside the office, the myth of the all-powerful president seems compelling. Yet presidents themselves stress the frustrations of holding office. Truman, describing what it was going to be like for his successor, Eisenhower, said: "He'll sit here, and he'll say, Do this! Do that! And nothing will happen. Poor Ike—it won't be a bit like the army."[33] Similarly, Lyndon Johnson once complained that the only power he had was nuclear, and he could not use it.

The point of these remarks is that presidential desires are not automatically translated into government policy. In the American system, power is shared. Congress, with its different constituency interests, often checks presidential initiatives. The bureaucracy has endless opportunities to circumvent presidential directives. According to political scientist and former presidential adviser Richard Neustadt, for a president to be effective, he must become adept at persuasion, convincing others that what he wants of them is in their own interest.[34]

Persuading Congress

Perhaps the greatest and most persistent problem facing any president is working with Congress. According to Lyndon Johnson, "There is only one way for a President to deal with Congress, and that is continuously, incessantly, and without

MYTHS IN POPULAR CULTURE





A Hero for President

In the summer of 1996, millions of Americans flocked to their local theaters to see director Roland Emmerich's science fiction thriller *Independence Day*. With its mix of heavy prerelease advertising, excellent special effects, and predictable melodramatic plot, including three separate love stories, *Independence Day* became a major hit of the summer season.

As the film opens, we are treated to an eerie vision of the American flag planted on the moon's surface being covered by the shadow of an alien spacecraft. A few minutes later, the scene shifts to the White House and the fictional president, Tom Whitmore. President Whitmore, much like John F. Kennedy, is a young, handsome war hero, with an attractive wife and a small child. He is also a president under attack. Criticized from all sides for his lack of success, with his public approval ratings slipping below 40 percent, the president is described by a real-life newswoman, Cokie Roberts, as a wimp.

When alien spaceships descend on the earth's major cities, however, the wimp president rises to the challenge. He addresses a frightened nation, urging calm and stressing America's desire for peace. When, despite his peace overtures, the alien ships start destroying the earth (some marvelous special effects show the White House being blown up), the president is forced to act. On the Fourth of July, he redeems himself and saves the world by once again becoming a hero.

Entertaining as it is, the movie offers a pastiche of several well-worn themes regarding American politics. Take, for instance, the characterization of President Whitmore as a wimp. Why is he a wimp? His aide tells him that he has become a politician. He compromises too much, and compromise is beneath a true leader. If he would just stick to his principles, he could once again become a great leader.

The movie also develops the theme of government conspiracy, so successfully used in the television drama *X-Files*. In the midst of the alien attack, the president learns that for forty years the government has been secretly spending billions of dollars on a place called Area 51. Managed by the CIA and the Department of Defense, Area 51 houses an alien spacecraft and its former occupants, as well as the obligatory mad scientist. (We all know about this place because that is where those famous alien autopsy films were made.) Of course, all these doings have been kept secret from the American people and their idealistic president by venal bureaucrats, who form an inside-the-beltway shadow government.

In the end, the aliens are defeated by the technical wizardry of a cable television technician/environmentalist and a squadron of fighter planes, manned by civilians (a kind of high-tech civilian militia) recruited and led by the president. Here, then, is a president who lives up to the job. No longer encumbered by politics or bureaucrats (he fired his secretary of defense), President Whitmore disdains compromise and transcends the status of a politician, becoming a leader.

More important, President Whitmore restores America to its place as the world leader. Not just Americans, but the whole world has been waiting for the president to lead the attack. Addressing the squadron before the assault, President Whitmore delivers a rousing speech, in which he notes that henceforth our national holiday will be the world's holiday. America behind a true leader saves the world, or what's left of it, anyway, and inspires ordinary people to rise to the challenge. This is truly the president as savior.

interruption. If it's really going to work, the relationship between the president and Congress has got to be almost incestuous."[35] As you may recall from Chapter 10, on Congress, presidential initiatives are only a starting point for congressional action. Obtaining congressional support is crucial. In pursuing this goal, presidents have three primary resources: party loyalty, staff lobbyists, and personal appeal.

CRITICAL THINKING

What are the consequences for the president of having Congress dominated by the opposition party?

Party Loyalty. At the heart of a successful strategy for dealing with Congress is the political party. Presidents must retain the support of members of their own party while gaining the support of as many members of the opposition party as possible. Historically, party loyalty has been fairly strong among congressional Republicans, and less so among congressional Democrats. Presidents cannot take members of their own parties for granted, but they must assume that most members of the opposition party will oppose them. Having a majority of seats in Congress is therefore no guarantee of an administration's success, but it is easier than dealing with a Congress controlled by the opposition.

Lobbying Staff. Before 1953, contacts between the president and Congress were informal and largely based on personal relationships. Some presidents relied on frequent social events to discuss their concerns with members of Congress. Jefferson used that tactic with particular success. His elaborate dinner parties were planned as much for their lively talk as for the superb cuisine. In 1953, however, Eisenhower created the Office of Congressional Relations to formalize the administration's lobbying efforts. (That did not, of course, replace the social events; rather, it provided the president with a structure for coordinating lobbying activities.)

Because Eisenhower offered few major legislative proposals, the office was initially small and mostly concerned with heading off the passage of legislation that he opposed. During the Kennedy and Johnson years, however, the office began to grow substantially as these administrations took a more aggressive legislative posture. Johnson, in particular, used the office to inform members of Congress of the administration's position on issues and to solicit congressional support. More important, Johnson expanded the role of the office by instructing its staffers to help members of Congress with personal services for constituents.

Although talented lobbyists can be quite effective in persuading members of Congress to support administration proposals, they must be close to the president if they are to succeed. According to Bryce Harlow, legislative liaison chief under both Eisenhower and Nixon, "for real effectiveness a White House congressional man must be known on Capitol Hill as a confidant of the president; he must be in the know."[36] As if to underscore the point, Harlow resigned as Nixon's liaison chief because he lacked the necessary access to the president.

During Carter's first year as president, his Office of Congressional Relations was notorious for virtually ignoring Congress. Complaints of phone calls not returned and a staff of inexperienced aides aggravated tensions between the White House and Congress. Much was made of the fact that Carter's chief liaison

officer, Frank Moore, had no Washington experience, but the real problem was that Carter paid little attention to Congress. Congressional relations were not a high priority of the early Carter administration.

Personal Appeal. A president's ability to appeal personally to members of Congress can be vital to his success. A little flattery and attention from a president can go a long way. Reagan used this personal approach to great advantage, offering frequent invitations to breakfast at the White House and gifts of cuff links bearing the presidential seal in his persistent effort to cultivate relations with Congress. On important bills, the president often made phone calls to wavering members, personally soliciting their support. But even Reagan's personal appeal had its limits. Although he had great success in securing congressional support early in his first term, his success rate declined markedly after 1982. A little flattery may go a long way, but too much dilutes its effectiveness.

Public Opinion

Lincoln once said, "Public sentiment is everything. With public sentiment nothing can fail, without it nothing can succeed." Although Lincoln overstated the importance of public approval, popularity is an important tool of persuasion. One political scientist has argued that members of Congress try to predict the public's reaction to their behavior toward the president and often decide on that basis what tack they should take.[37] Lacking precise information about public attitudes, they look to the president's popularity as a guide. Popularity does not guarantee presidential success, however. "When [a member of Congress] is confronted by a choice between supporting a popular president and the clear interests of his constituents, the president's public prestige is a poor match for his or her constituents' interests."[38]

Naturally, presidents are well aware of the importance of public popularity. (When the polls were good, Lyndon Johnson used to carry the results in his breast pocket, ready to show anyone who needed convincing.) Recent presidents have increasingly tried to translate their popularity into political strength by taking their policy proposals directly to the public. Many of Reagan's early successes in cutting the budget were attributed to his skillful use of this strategy. His televised appeals to the nation for help in cutting taxes put pressure on Congress to act.[39]

As a method of influence, going public has its drawbacks, however. First of all, there is the danger of overuse. A president who calls for public response too many times may find the audience losing interest. More fundamentally, the effectiveness of public appeals depends on the president's general popularity, and presidential popularity tends to decline during a president's term of office.

At the beginning of a term, presidents traditionally enjoy a honeymoon period of broad public support and favorable media coverage. Indeed, with the exception of Ronald Reagan, a substantially larger percentage of Americans have

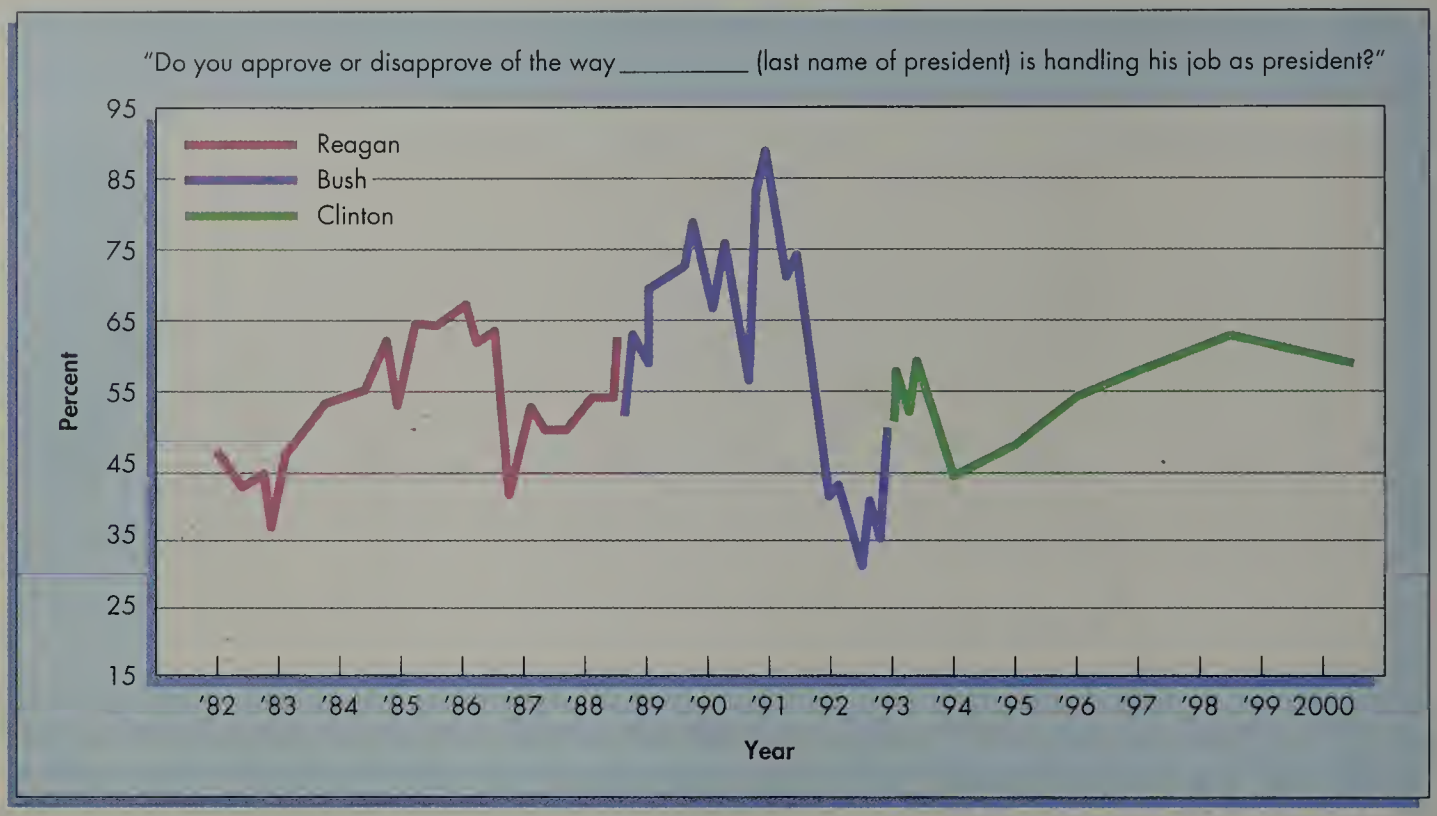


FIGURE 11.1
Presidential Approval, 1982–2000

Every president experiences a decline in public approval as the term of office progresses.

Sources: 1982–1988: *The Gallup Report* (July 1988), 19–20; the Gallup poll, "Reagan Regaining Public Confidence," press release, October 9, 1988; and the Gallup Library, 1994–July 9, 2000, from the Gallup web page http://www.gallup.com/ratings.

approved of newly elected presidents than were willing to vote for them. By the third year in office, however, public approval declines significantly (see Figure 11.1). President Bush's drop from a 90 percent approval rating immediately after the Gulf War to 39 percent at the beginning of his fourth year serves as a reminder of the likelihood of decline.

The existence of this decline in presidential popularity is part of what political scientist Paul Light calls the "cycle of decreasing influence." According to Light, as the term progresses, a president's political capital (that is, public approval and partisan support), time, and energy diminish, seriously eroding his influence over public policy.[40] Given this cycle, presidents may even suffer from these initially high ratings. When inflated ratings drop, as they inevitably will, "the fall can be all the more devastating."[41]

CRITICAL THINKING

Why do presidents' approval ratings fall during the term?

High levels of public approval may also be a trap for modern presidents. As a president's popularity surges, expectations of successful leadership also escalate. Indeed, the more popular the president, the more the myth of the all-powerful president seems a reality. But, as we have seen, presidents are not the govern-

ment, and while high public approval ratings may give presidents some leeway, they do not automatically translate into power. A highly popular president who does not translate high approval ratings into visible legislative successes runs the risk of looking like a failure.

Conclusion: The All-Powerful President?

According to the myth of the all-powerful president, modern presidents possess awesome powers that, if mobilized, would enable them to solve all the country's problems. Although that myth has not always prevailed, it colored public expectations of the presidency in the latter half of the twentieth century. As the office evolved to its current state, the course of change has not been smooth. Presidential power has increased at times of grave emergency and great stress. In calmer periods, Congress has generally reasserted its role by reining in the president.

The broad range of roles ascribed to the president further enhances the myth of presidential power. Yet presidents often find that the duties associated with these roles are more difficult than they imagined. And Congress is hardly a silent spectator in the process of governing.

To give him support in his various roles, the president has acquired a multitude of advisers—in the cabinet, the Executive Office of the President, and the White House Office. In fact, presidents are surrounded by a bureaucracy of advisers who constitute the institutional presidency. Thus the president does not lack counsel; instead, the problem has become one of managing the advisers.

Finally, we have examined presidential power as persuasion. Although the office itself is generally seen as all-powerful, presidents find that their wishes do not automatically become policy. In this system of shared powers, the president must convince others that what he wants is in their interest as well. The invoking of party loyalty, effective lobbying, and personal appeal are all potential means of persuasion, but the support of the public is particularly useful. Although popular approval does not guarantee presidential success, it makes it more likely.

Summary

1. The powers of the presidency have expanded significantly since the adoption of the Constitution. American history has witnessed periods of presidential dominance, usually in times of emergency, followed by congressional efforts to reassert the power of Congress by limiting that of the president.
2. The importance of the modern presidency is seen most clearly in the variety of roles that the incumbent is now expected to play. As chief of state, for example, the president is the ceremonial head of the government.
3. As chief executive, the president must "take care that the laws be faithfully executed" and manage

an executive branch composed of some 3 million employees. To perform the duties of chief executive, the president has the power of appointment, the power to grant pardons, and the power of executive privilege, but none of these is unlimited.

4. As chief diplomat, the president, with the advice and consent of the Senate, can negotiate treaties and make diplomatic appointments. The president also has the power to extend diplomatic recognition to other countries and can make executive agreements with other nations without Senate approval.

5. As commander in chief, the president is supreme commander of the military forces. Presidents have also used that role to claim the power to make war.

6. As chief legislator, the president can convene special sessions of Congress and adjourn Congress if the two houses cannot agree on a date of adjournment. The president is also required to give Congress "from time to time" information on the "State of the Union" and to recommend measures for congressional action. Furthermore, the president has the power to veto acts of Congress, although the veto is subject to override.

7. The modern president is assisted by several advisory groups: the cabinet, the Executive Office of the President, the White House Office, and the office of the vice president. These groups constitute the institutional presidency.

8. The cabinet, consisting of the fourteen department heads, the ambassador to the United Nations, and other officials whom the president designates, is the original presidential advisory group. But the cabinet does not often function effectively, and most presidents hold cabinet meetings for purely ceremonial purposes.

9. Created by an executive order of Franklin D. Roosevelt, the Executive Office of the President (EOP) contains ten separate organizations, including the Office of Management and Budget, the Council of Economic Advisers, and the National Security Council.

10. Also within the EOP is the smaller White House Office, which includes assistants, special assistants, counselors, special counselors, and consultants, who perform a wide variety of personal and political duties for the president.

11. The vice president presides over the Senate but votes only to break a tie. The vice president assumes the presidency if the president dies, resigns, is removed by impeachment, or is unable to function because of a disability.

12. To be effective, presidents must be skilled at persuasion. In dealing with Congress, presidents can rely to some extent on party loyalty, but they must also assemble an effective lobbying staff and use it well. Skillful use of personal appeals to legislators is often effective and necessary.

13. Presidents are more successful at persuasion when their public popularity is high, but popularity often eludes them as their term progresses.



Net Work

For a general overview of the presidency and the White House, check out the web site of the White House Historical Association **(http:// www.whitehousehistory.org).** While you are there, take a virtual tour of the White House and check out its China and art collections.

Are you looking for a specific document from a previous administration? Visit the National Archives and Records Administration site **(http://nara.gov/nara/president).** Use this source or one of the presidential libraries linked to it to find an example of an executive order, or try finding a presidential veto message.

If your interests are more current, there are a couple of excellent sources for following the day-to-day activities of the president. First, you can read daily press releases and briefings, the same ones reporters use for stories, by going to the White House Official Source **(http://www.whitehouse.gov).** If you have the software, you can also listen to the president's Saturday radio address. Try comparing a White House press release with a published press account of that release. How true to the original release is the media story?

For a more visual experience of the White House, look at EXBTV.COM **(http://www.exbtv.com).** This site provides audio and video coverage of the goings-on at the White House. Presidential speeches, bill-signing ceremonies, and press briefings can be viewed or heard live. Pick an event that interests you and write your own news story.

CHAPTER 12

Bureaucracy

- A Profile of the Federal Bureaucracy

Who Are the Bureaucrats? Political appointees, merit systems, and wage systems

What Do Federal Bureaucrats Do? Direct policy implementation and proxy administration

Where Do They Work? Executive Office of the President, the cabinet departments, independent executive branch agencies, regulatory commissions, government corporations, and other agencies

A Diverse Institution: Large and complex

- Growth of the American Bureaucracy

Overview of Bureaucratic Growth: Rapid expansion since late 1800s

Explaining the Growth of the Bureaucracy: Several causes

- Bureaucratic Power

The Sources of Bureaucratic Power: External support, expertise, discretion, longevity in office, and skill and leadership

Limiting Bureaucratic Power: Self-restraint and limited resources, the White House, Congress, the courts, other restraints; increased responsiveness

- Bureaucratic Problems and Reforms

Bureaucratic Pathologies: Clientelism, incrementalism, arbitrariness, parochialism, and imperialism

Calls for Reform: Various approaches; presidential reform efforts

- Conclusion: Expectations and Government Operations

MYTH & REALITY

Are Washington bureaucrats unresponsive and incompetent?

MYTH & REALITY

On July 6, 1994, fourteen federal employees—members of the nation's nameless and faceless "bureaucracy"—died doing their jobs. They had names: Kathi Walsleben Beck, Scott Alan Blecha, Douglas Michael Dunbar, Bonnie Jean Holtby, Jon R. Kelso, Jim Thrash, Don Mackey, Richard Kent Tyler, Roger Roth, Rob Johnson, Terri Ann Hagen, Levi Brinkley, Robert E. Browning, Jr., and Tamera Jean Bickett. If you saw them at home with their families, or even if you saw them at work with their colleagues, you would never consider calling them "bureaucrats." Instead, you would think of them as members of a team of forest firefighters—brave souls who spent their workdays digging trench lines among the thick growth so that fires could be slowed down or extinguished. That July day, those members of the U.S. Forest Service "Hot Shots" team were caught in a wind gust that swept over the slopes of Storm King Mountain in Colorado's Glenwood Canyon at 1,000 feet per minute, generating temperatures of up to 2,000 degrees Fahrenheit. Thirty-five of their co-workers made it to safety. They did not.[1]

When Americans think about government bureaucracy, they rarely consider the Hot Shots or the thousands of others who risk—and sometimes give—their lives in public service. Instead, they picture incompetent or unresponsive pencil pushers, sitting behind their desks in Washington, D.C., wasting the taxpayers' money. Those are the images fed by the popular media and built on a foundation of two pervasive myths: the *myth of bureaucratic incompetence* and the *myth of the unresponsive bureaucracy.*

Dangerous Enough for Government Work

Many federal employees do not fit the typical stereotype of the gray-suited bureaucrat sitting at some desk in Washington, D.C. Pictured are four federal forest firefighters viewing smoke from the tragic fire in Glenwood Canyon, Colorado, that took the lives of fourteen of their colleagues.



Behind the myth of bureaucratic incompetence is a widely held belief that the management of government programs should not be significantly different from private-sector management. According to that view, governments can and should be as efficient and effective as businesses. The myth of bureaucratic incompetence has emerged because most government programs do not seem to live up to private-sector standards. To most Americans, the federal bureaucracy seems too large and cumbersome, bloated by wasteful practices and inefficiencies.

Public opinion polls illustrate the growing popularity of the myth of bureaucratic incompetence. In 1958, when people were asked if they thought "that people in the government waste a lot of money we pay in taxes," only 43 percent answered affirmatively. In 1964, that figure had risen to 47 percent. Mirroring the decline of public trust in government discussed in Chapter 1, the attitude that government wastes "a lot" of taxpayer money climbed throughout the late 1970s, reaching its height in 1980, when 78 percent expressed that opinion. For the past two decades, that figure has ranged from 60 to 70 percent—an improvement of sorts, but still reflecting a very negative public assessment of government work.[2]

The myth of an unresponsive bureaucracy is also reflected in survey results. In a 1999 survey conducted for the Council for Excellence in Government, a majority of those polled felt "disconnected" from the government and were more likely to think of it as "*the*" government than as "*our*" government.[3] Polls also indicate that many Americans assume that individual agencies and bureaucrats do as they please, despite popular wishes. That is clearly illustrated in Figure 12.1. Those agreeing with the statement that government "is pretty much run by a few interests looking out for themselves" increased from 29 percent in 1964 to nearly 76 percent in 1994. The figure declined to 64 percent in 1998, but that still means that a significant number of Americans view their government as unresponsive to their needs. No less disturbing is the finding that 41 percent of those surveyed in 1998 believed that "quite a few of the people running government are crooked." That is a decline from the 52 percent who believed in the corruption of government officials just four years earlier, but it represents a significant increase from the 29 percent who agreed with that statement in 1964.[4] Given the widespread belief in the myth of the unresponsive bureaucracy, it is little wonder that the American public is suspicious about the work of federal government agencies.

A Profile of the Federal Bureaucracy

The myths of an incompetent and unresponsive federal bureaucracy result in part from a lack of knowledge about the agencies and the people who make up the administrative machinery of our government. We often hear complaints about the bureaucracy as though it were a monolithic entity that could be found in a particular location in the middle of Washington, D.C.—just like Congress or

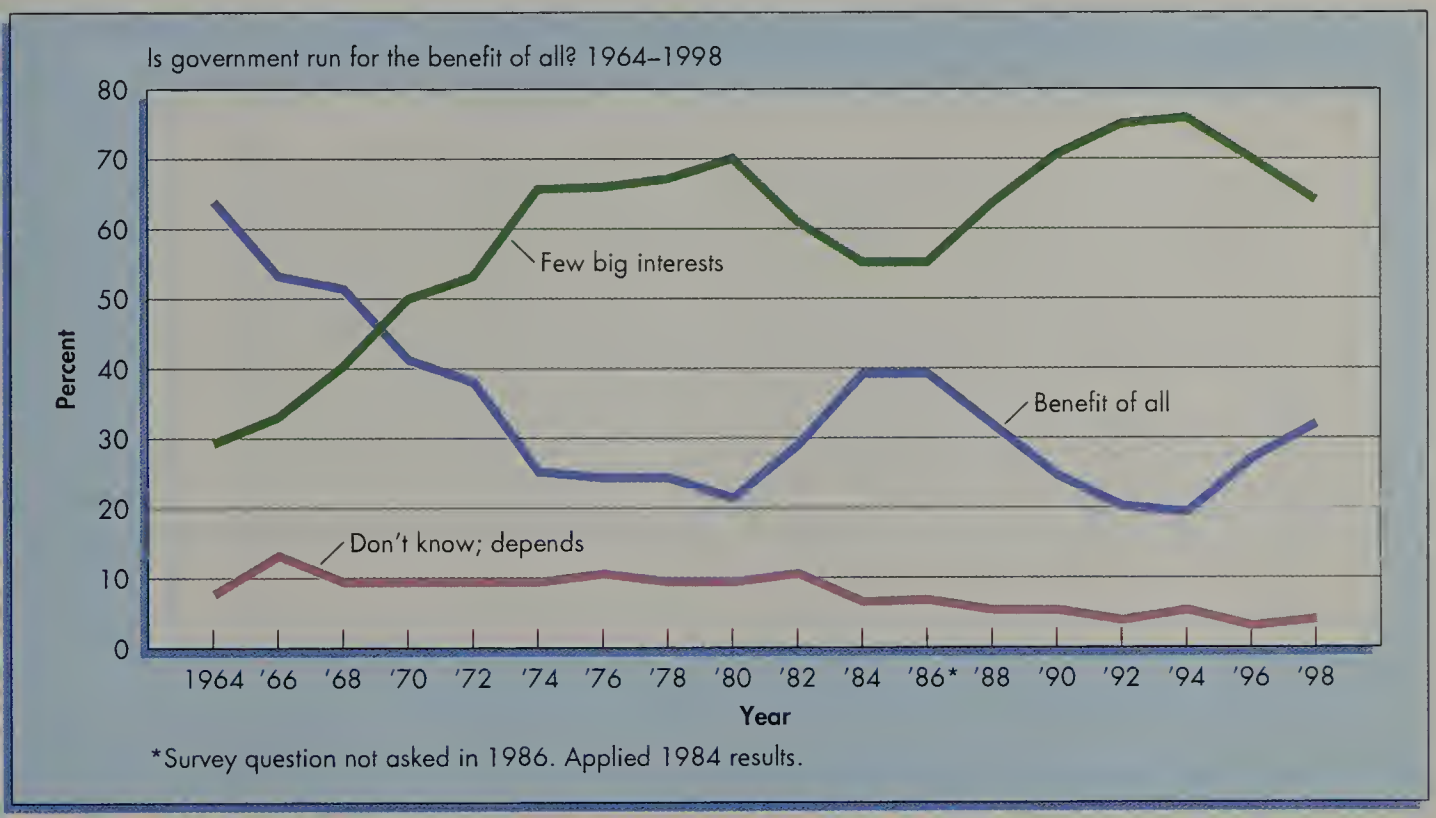


FIGURE 12.1
Is Government Run for the Benefit of All? 1964–1998

Source: National Election Studies, "Support for the Political System: Is Government Run for the Benefit of All? 1964–1998." http://www.umich.edu/~nes/nesguide/toptable/tab5a_2.htm.

the White House or the Supreme Court. As we shall see, the facts offer an entirely different picture.

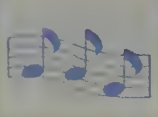
Who Are the Bureaucrats?

Bureaucracy Any large, complex organization in which employees have specific job responsibilities and work within a hierarchy. The term is often used to refer to both government agencies and the people who work in them.

Technically, a **bureaucracy** is any large, complex organization in which employees carry out specific job responsibilities within a hierarchy. For most Americans, however, the term *bureaucracy* is commonly used to describe both government agencies and the people who work in them. For our purposes, in 1999 the term applied to the 2.7 million nonelected civilian federal employees working in the United States and abroad. Although we will focus on these civilian federal workers, we should keep in mind that there are another 1.4 million uniformed individuals in the military and that 17.5 million people work for state and local governments.[5]

Some 86 percent of federal civilian workers are employed in full-time clerical, technical, service, managerial, professional, and other white-collar positions. That includes people working in a wide range of occupations. For example, in 1997 the federal government employed 317 biomedical engineers, 780 creative arts therapists, 2,747 librarians, 11,366 practical nurses, and 25,285 general

MYTHS IN POPULAR CULTURE


Hollywood Bureaucrats . . . and Other Myths

The myths surrounding bureaucracy find expression in many parts of America's popular culture, but especially in its movies. On any given evening, Americans can select from among dozens—if not hundreds—of home videos that entertain by using myth-based images of government bureaucracy.

Those with a hankering for some comic relief can find movies that spoof incompetent, bungling, or overzealous government officials. The U.S. Environmental Protection Agency is the inept source of problems in the film *Ghostbusters*. In the 1993 release *Coneheads*, agents of the U.S. Immigration and Naturalization Service are overeager and self-serving in their pursuit of the strange, pointy-headed "aliens."

Those who prefer action and adventure movies may find the messages about government bureaucracy more mixed. In the 1993 movie *Cliffhanger*, starring Sylvester Stallone, the heroism of a National Park Service mountain rescue team soon makes you forget the corruption of a federal official that resulted in the hijacking of a shipment of Treasury notes. And while most people who saw *In the Line of Fire* will remember how Clint Eastwood's Secret Service character stopped a presidential assassination, they will also recall the negative image of his superiors, who constantly questioned his competence.

The same double message about government employees comes through in the film version of Tom Clancy's novel *Clear and Present Danger*. The hero, Central Intelligence Agency deputy director Jack Ryan (played by Harrison Ford), stands out as a bureaucrat with professional integrity who will not give in to the political pressures of Washington, D.C. In stark contrast is the behavior of Bob Ritter, another deputy director, who supports the bad political decisions and regards Ryan as a hopeless "boy scout." Rarely, if ever, is the motion-picture image of the public servant unambiguous. In most instances, that image portrays the contrasting myths about public administrators.

For additional analysis, see Stephen Powers, David J. Rothman, and Stanley Rothman, *Hollywood's America: Social and Political Themes in Motion Pictures* (Boulder, Colo.: Westview Press, 1996).

CRITICAL THINKING

What are the differences between government bureaucracies and the bureaucracies found in large corporations?

attorneys. The blue-collar federal government work force, which includes carpenters, maintenance workers, and a variety of other skilled and unskilled workers, is equally diverse. In 1997, for instance, the federal government employed 7,254 sheet metal mechanics, 6,016 electricians, 4,547 pipefitters, 533 pest controllers, and 35 tool grinders.[6]

In 1997, 48.7 percent of all federal white-collar employees were women, with a significant portion of them holding low-level clerical positions. Within the ranks of blue-collar workers, men held more than 90 percent of the jobs and just under 95 percent of the supervisory positions.

In 1999, the "typical" federal employee (excluding postal workers) was 45.9 years of age and had been working for the federal government 16.9 years. Slightly more than 40 percent had earned a bachelor's degree or higher, and

worked for an annual base salary of $47,148 ($59,974 if he or she worked in the Washington, D.C., area). Members of minority groups constituted 30 percent of all federal workers: 17 percent African American, 6.5 percent Hispanic, 4.4 percent Asian American, and 2.1 percent Native American. Some 7.2 percent had disabilities. Approximately 24.8 percent were veterans, with 14.1 percent having served during the Vietnam War.[7]

Political appointees Government officials who occupy the approximately three thousand most strategically important positions in the federal government and who are appointed by the president. About six hundred of these formal appointments must be confirmed by the Senate.

Political Appointees. The federal government has adopted several different personnel systems to manage this large and diverse work force. The most visible consists of **political appointees,** who occupy the most strategically important positions in government. At the top of this group are the members of the president's **cabinet,** an official advisory board comprising the heads of the fourteen major departments responsible for carrying out most of the federal government's policies and programs (see Chapter 11, on the presidency). The heads of these departments have the title of secretary, except at the U.S. Department of Justice, where the chief officer is called the attorney general. Below them are assistant and deputy department secretaries, deputy assistant secretaries, counselors, and a variety of other appointive positions.

Cabinet An official advisory board to the president, made up of the heads (secretaries) of the fourteen major departments in the federal government.

Under President Bill Clinton, less than 0.2 percent of the total civilian, nonpostal federal work force (3,084 in December 1998) were political appointees. Of those, 676 hold the top formal appointments made by the president that have to be confirmed by the U.S. Senate. Theoretically, whether confirmed by the Senate or not, all these appointees owe their positions to the president, and with few exceptions their tenure in office hinges on how the White House evaluates their performance.[8]

CRITICAL THINKING

Should those who head federal agencies be appointed on the basis of their expertise or their loyalty to the president whom they serve?

At one time in our history, political appointees made up a vast majority of the federal bureaucracy. **Patronage**—a system in which you receive a government position based on whom you know rather than what you know—was commonplace. Thomas Jefferson used patronage in 1801 when he replaced many government workers who were loyal to John Adams and the Federalist party. But the first wholesale application of patronage followed Andrew Jackson's election nearly three decades later. Jackson believed in the **spoils system,** that is, giving government jobs at all levels to members of the winning party ("to the victor go the spoils"). That reflected more than a desire to reward his friends: Jackson was committed to opening up government positions to ordinary American citizens, and the political appointment process was his means of promoting democracy.

Patronage A system of filling government positions in which whom a person knows is more important than what a person knows.

Spoils system A patronage system in which government jobs at all levels are given to members of the party that has won the top political office.

The Jacksonian spoils system influenced the design and operation of the federal government for several decades. Under this system, the federal bureaucracy was probably more than usually responsive to the president's wishes, because loyalty to the White House was the key to getting the job in the first place. But there was another important outgrowth of this patronage approach. Because no one stayed in any position for very long, government jobs had to be redesigned and standardized so that anyone could step in to perform the tasks the position required. Thus the job of being a postal clerk or a customs tax collector was made much simpler and less demanding. Instead of

seeking people with special skills for special jobs, government agencies hired less-skilled people and then trained them to do the tasks demanded by the simply designed positions.[9]

Pendleton Act A law passed in 1883 that established the first merit-based personnel system for the federal government.

Merit system A system that stresses the ability, education, and job performance of government employees rather than their political backgrounds.

Merit Systems. But the spoils system inevitably led to undesirable outcomes, such as widespread political corruption in the administration of Ulysses S. Grant and the assassination of President James Garfield in 1881 by a disgruntled office seeker. These events led to calls for reforms, and in 1883 Congress passed the **Pendleton Act,** which reduced the number of political appointments a president could make and established a **merit system** for about 10 percent of existing federal jobs. A merit system stresses employee ability, education, experience, and job performance; political factors are not supposed to be considered. Hiring and promotion depend on competitive examinations or job performance evaluations, usually overseen by a civil service commission or a professional personnel office.

The national government's merit system now applies to almost 95 percent of all federal civilian jobs. Many of these come under the **general civil service system,** which covers government positions from weather forecasters to financial analysts and from librarians to civil engineers. Many of these federal workers obtain their jobs through a competitive process. Almost all positions under this personnel system are ranked according to a General Schedule (GS), which ranges from GS-1 through GS-15 (see Table 12.1).

General civil service system The merit-based system that covers most white-collar and technical positions in the federal government.

Senior Executive Service (SES) The highest category of federal civil service employees, composed of a select group of public administrators who specialize in agency management.

At the top of the general civil service is the **Senior Executive Service (SES),** a select group of federal public administrators who specialize in managing public agencies. Most of the civil servants in the elite SES have made their mark as effective managers within individual agencies where they have spent most of their careers. In becoming part of the SES, those managers agree to make themselves available for transfers to other agencies that need their talents. In exchange, they receive higher salaries (see Table 12.1) and the possibility of greater rewards. Before the Civil Service Reform Act of 1978 established the SES, the best executive talent in the federal government occupied "supergrade" positions (GS-16 through 18) within their home agencies and could not be efficiently or effectively used because moving from one agency to another was too difficult. Eventually, the supergrade positions in most agencies have been phased out. Now, along with a small group of presidential appointees, SES personnel fill most major managerial positions in federal agencies.

Career service personnel systems Separate personnel systems for highly specialized agencies like the Coast Guard and the Foreign Service.

Besides the general civil service and the SES, there are career service personnel systems for highly specialized agencies, such as the Forest Service and the Coast Guard. Perhaps the best known of these career service systems is the Foreign Service, which includes more than 13,000 State Department officials who serve in American embassies throughout the world. The Department of Veterans Affairs (formerly the Veterans Administration) operates the largest career service system, employing more than 36,000 physicians and surgeons. Altogether, approximately 125,000 federal civilian employees occupy positions in these career service systems.

TABLE 12.1

Pay for Meritorious Service: The Salary Scale for White Collar Federal Employees

Standard salaries for federal workers generally reflect the pay earned by their counterparts in private industry, except at the higher levels where ceilings are imposed by Congress on compensation.

General Civil Service

Grade: Salary Range for 2000	
1: $13,870–17,351	9: $32,380–42,091
2: $15,594–19,622	10: $35,658–46,359
3: $17,015–22,118	11: $39,178–50,932
4: $19,100–24,833	12: $46,955–61,040
5: $21,370–27,778	13: $55,837–72,586
6: $23,820–30,966	14: $65,983–85,774
7: $26,470–34,408	15: $77,614–100,897
8: $29,315–38,108	

Senior Executive Service (SES)

ES-1: $106,200	ES-4: 122,200
ES-2: 111,200	ES-5: 122,400
ES-3: 116,300	ES-6: 122,400

Source: OPM web site: http://www.opm.gov/oca/2000tbls/Execses/html/00sesbas.htm.

Wage systems Federal personnel systems covering over a million federal workers who perform blue-collar and related jobs and are largely represented by unions or other associations with limited bargaining rights.

Wage Systems. Finally, more than a million workers can be classified as part of the federal government's **wage systems.** Included in this group are those with blue-collar and related jobs, ranging from pipefitting to janitorial work. More than 765,000 career and nearly 128,000 non-career postal workers make up the largest single organized group in this category. Many of the workers in these wage systems are paid by the hour, and a great many are represented by unions or other associations that have limited bargaining rights under current civil service laws.

What Do Federal Bureaucrats Do?

The primary role of the national bureaucracy is to implement the policies of the federal government. In that sense, the work of federal agencies touches almost every aspect of American life. Sometimes these agencies carry out the policies themselves. For example, the Federal Aviation Administration employs air traffic controllers to oversee the growing volume of aviation in America's skies, and federal rangers protect and manage national parks and forests throughout the country. We also deal directly with federal employees when the U.S. Postal

Doing the Public's Business

Many private firms conduct the public's business under government contracts. Among the biggest contractors are aircraft manufacturers.



Service delivers our mail, when we have questions about social security benefits, or when we have problems with our federal taxes.[10]

At other times, the federal bureaucracy carries out its implementation tasks indirectly, through a variety of tools that one analyst has termed "government by proxy." **Proxy administration** of government programs includes such things as government contracts, grants-in-aid, loan guarantees, and the establishment of government-sponsored enterprises to carry out government programs.[11]

Proxy administration
The government's use of indirect means to deliver public goods and services, such as contracting, grants-in-aid, loan guarantees, and government-sponsored enterprises.

Many government activities are carried out through *government contracts* with private firms. The U.S. Department of Defense makes use of this approach when it hires private companies to build weapons systems or supply food for the troops. In 1998, for example, Lockheed Martin Corporation earned more than $12.8 billion from Defense Department contracts, and another $5.7 billion from non-defense agreements with the federal government. While that is a significant amount of business for one company, it must be seen in the light of the fact that the federal government purchased nearly $182 billion in goods and services from the top 200 private companies during that same year,[12] and billions more from hundreds of smaller contractors.

The intergovernmental relations system and its *grant programs,* discussed in Chapter 3, on federalism and intergovernmental relations, offer another indirect means of implementation. For instance, through grants to states and localities, the U.S. Department of Education can get local school districts to offer special-education courses for children with learning disabilities. Similarly, the U.S. Department of Transportation provides the states with funds for highway construction and maintenance through a special trust fund.

The federal government also uses other indirect means to carry out some

of its policies. Through bank *loan guarantees*, for example, some federal agencies are able to get local financial institutions to lend money to home buyers, students, or farmers who might not otherwise qualify. These guarantees cost the taxpayers nothing until and unless the borrower defaults on the loan—something that was happening with greater frequency for student loans during the 1980s.

In some cases, the federal government has established special *government-sponsored enterprises*, which, among other functions, make credit more easily available to special populations for specific purposes without relying on loan guarantees. Though created by the government, these organizations often operate as if they were privately owned and operated. For example, the federal government created the Student Loan Marketing Association (known as "Sallie Mae"), which promotes low-cost loans to students by arranging to "buy" student bank loans from lending institutions and then selling them to investors. Similar organizations exist for home loans (such as the Federal National Mortgage Association, known as "Fannie Mae") and loans to farmers.

Federal bureaucracies also play an important role in making government policies. They often provide expert advice to policymakers, especially in the design of special policies and highly technical programs. Agencies such as the Bureau of Reclamation and the Army Corps of Engineers develop plans for water diversion and storage projects, which then go to the White House and Congress for revision and adoption as official government programs. At other times Congress and the president establish the general outlines of policies and leave specific policy decisions to designated agencies. That approach is common with defense policies: Program details are left to civilian and military experts at the Pentagon.

Executive Office of the President (EOP) The collective name for several agencies, councils, and groups of staff members that advise the president and help manage the federal bureaucracy. The EOP was established in the 1930s; the number and type of agencies that constitute it change with each presidential administration.

Office of Management and Budget (OMB) An EOP agency that acts as the president's principal link to most federal agencies. The agency supervises matters relating to program and budget requests.

White House Office An EOP agency that includes the president's key advisers and assistants who help him with the daily requirements of the presidency.

Where Do They Work?

Federal civil servants work in literally hundreds of agencies, ranging from those closest to the president to agencies with a great deal of independence from the White House.

Executive Office of the President. Faced with the task of managing the federal bureaucracy, the president relies on several agencies that collectively make up the **Executive Office of the President (EOP)** (see Chapter 11, on the presidency). Among the most important of the EOP agencies is the **Office of Management and Budget (OMB).** The OMB is the president's principal link to most federal agencies. Almost all federal agencies report to the OMB on matters relating to program and budget requests. A smaller (but no less important) group of EOP employees is located in a variety of offices known collectively as the **White House Office.** These staff members include the president's key advisers, as well as those who help the chief executive deal with the day-to-day business of the presidency (see Myths in Popular Culture box in Chapter 14).

Also found in the EOP are various councils and staff members specializing in particular policy areas. These agencies include the *Council of Economic Advisers*,

the *National Security Council,* and the *Office of National Drug Control Policy.* The number of these agencies changes with each presidential administration. For example, in 1981 President Ronald Reagan eliminated the Council on Wage and Price Stability, which had been created ten years earlier by President Richard Nixon to oversee anti-inflation policies. In 1989 President George Bush established a National Space Council in the EOP to deal with issues related to the nation's space policy; a similar agency had been eliminated by Nixon during his administration. When Bill Clinton took office, he eliminated the National Space Council. At the same time, he created a National Economic Council to assist in the coordination of economic policy and changed the mission of the Office of National Service to promote his initiative for providing college students an opportunity to volunteer for community service as a means for repaying educational loans.

The importance of EOP agencies also varies over time. For many years, the Special Representative for Trade Negotiations was an obscure office in the EOP. However, foreign trade and international economic policy became a major factor in American life during the 1970s and 1980s(see Chapter 15, on foreign and defense policies), the job of the trade representative grew more important. The agency, now called the *Office of the United States Trade Representative,* became increasingly visible. The choice of a person to head the office was as significant as any cabinet appointment for Presidents Jimmy Carter, Ronald Reagan, and George Bush.

EOP agencies are designed to play key roles in formulating public policy, but not in carrying it out. Under the Reagan administration, however, some members of the National Security Council staff crossed the boundary into implementation when they arranged to sell arms to a hostile government in Iran and illegally transfer funds to support rebel groups in Central America. The resulting scandal, which surfaced in 1986, led to several resignations and a political crisis that nearly paralyzed the White House. In 1989, one of those staff members, Oliver North, was convicted on charges stemming from that episode. In 1990, John Poindexter, Reagan's national security adviser and North's immediate superior, was tried and convicted of charges related to what became known as the Iran-Contra affair. Although those convictions were later overturned by the courts on technical grounds, the investigation and prosecution of government officials involved in the scandal continued through 1992.[13]

The Cabinet Departments. The most visible agencies in the executive branch are the fourteen cabinet departments. As we have already noted, they are the major bureaucratic institutions responsible for carrying out most of the federal government's policies and programs (see Figure 12.2). Each department is headed by a secretary, or, in the case of Justice, the attorney general. Some of these departments are in charge of basic government functions, such as defense and foreign relations. Others address the needs of special groups—for example, agriculture, veterans affairs, and labor—or coordinate federal programs in education, energy, health and human services, and other areas.

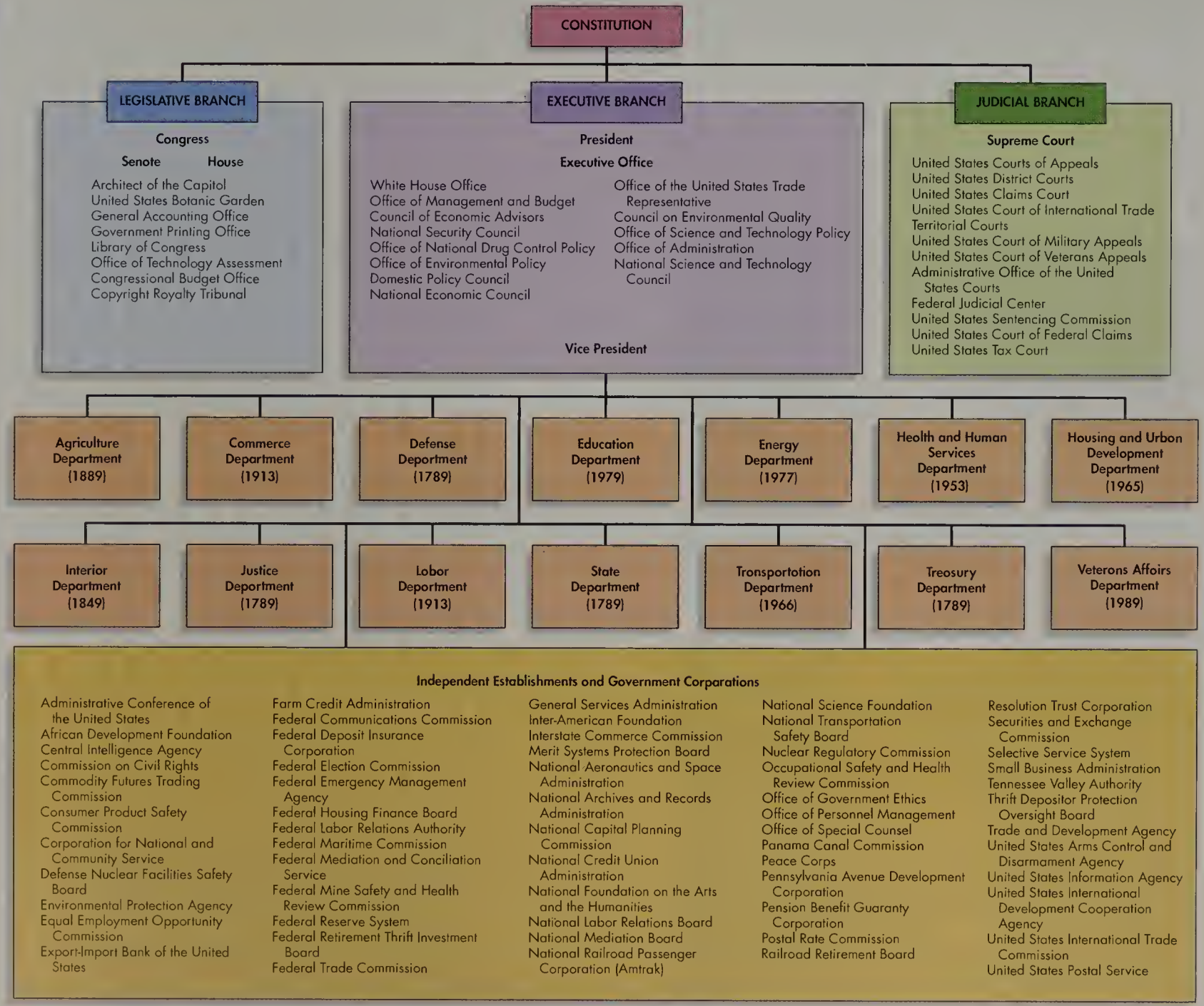


FIGURE 12.2 Government of the United States

Each cabinet department is composed of smaller units, called bureaus, offices, services, administrations, or divisions. For example, among the major units in the U.S. Department of the Treasury are the Internal Revenue Service (IRS), the U.S. Customs Service, the Bureau of the Public Debt, the Financial Management Division, the U.S. Mint, the Bureau of Engraving and Printing, the Office of the Comptroller of the Currency, the U.S. Secret Service, and the Bureau of Alcohol, Tobacco, and Firearms. Many of these units are divided into even smaller subunits. The IRS, for instance, has several regional offices, more than sixty district offices, and nearly two hundred local offices.

There is no particular logic underlying the way cabinet departments are organized. In fact, cabinet agencies often face the challenging task of coordinating their efforts with those of agencies in other cabinet departments. Thus, when the Department of Interior's Bureau of Land Management (BLM) needs to fight wildfires, such as the 1994 Glenwood Springs flare-up described at the beginning of this chapter, it often has to rely on other agencies to do so. The Hot Shots who lost their lives in that fire actually worked for the U.S. Forest Service, which is part of the Department of Agriculture. In the summer of 2000, both the BLM and the Forest Service sought help from the Department of Defense as well as state and local governments in dealing with one of the worst forest fire seasons in decades. In addition, both agencies must rely on the National Weather Service, which is part of the Department of Commerce, for detailed information on atmospheric conditions at the blaze site. When faced with the prospect of evacuating private property or dealing with the aftermath of the wildfires, they turn to the Federal Emergency Management Agency (FEMA), an independent agency (see below).

Independent agencies More than two hundred agencies that exist outside the EOP and the cabinet departments. Reporting directly to the president, they perform a wide range of functions, from environmental protection (EPA) and managing social programs (SSA) to responding to disasters (FEMA), conducting the nation's space policy (NASA), and helping the president manage the federal government (GSA and OPM).

Independent Executive Branch Agencies. A great many federal bureaucrats work for the more than two hundred **independent agencies** that exist outside both the EOP and the cabinet departments. Many of these agencies carry out important government functions. Despite the way it has been portrayed on the popular TV series *The X-Files*, the *Federal Emergency Management Agency* actually helps to coordinate national, state, and local government responses to major disasters. The *Environmental Protection Agency (EPA)* regulates air and water quality, as well as the use of pesticides, disposal of hazardous wastes, and other challenges to the ecology. The *National Aeronautics and Space Administration (NASA)* runs the civilian space program. The administrators who head these independent executive branch agencies report directly to the president and do not have to work through a cabinet department bureaucracy.

There is no overall rationale for some agencies being independent while others are part of cabinet departments. Sometimes the nature of what an agency does calls for this special status. In other instances, the political importance of an agency's programs at the time it was created made the difference. Both factors were involved when the *Social Security Administration (SSA)* was made an independent agency in 1994. Formerly part of the Department of Health and Human Services, SSA implements a variety of important social programs, including

NASA's Shuttle Missions

In recent years, the primary project of the National Aeronautics and Space Administration (NASA) has involved space shuttle missions. Pictured is the liftoff of the space shuttle Columbia on a successful two-week mission conducted in March 1994.



federal old age and disability insurance (see Chapter 14, on domestic policy and policymaking). SSA is a very large and important agency; furthermore, financing SSA programs has been a politically sensitive issue over the past two decades.[14] Efforts to reform social security programs have often led to charges of partisanship on the part of SSA administrators. The Social Security Independence and Program Improvements Act—signed on August 15, 1994, exactly fifty years and one day after social security was established—made SSA an independent agency. Under the new act, the Commissioner of Social Security is appointed for a term of six years and can be removed only by the president and only "for cause." Thus, not only was SSA taken from under the jurisdiction of the secretary of the Department of Health and Human Services, but its head was given some protection from being removed from office arbitrarily or for political reasons.

Of special note are those independent agencies that play a housekeeping and human resource management role in the federal government. For example, the *General Services Administration (GSA)* acts as the government's landlord and maintenance team, and the *Office of Personnel Management (OPM)* has responsibility for overseeing several of the federal government's personnel systems and the training and development of all civilian personnel.

Regulatory commissions Federal agencies led by presidentially appointed boards that make and enforce policies affecting various sectors of the U.S. economy. Formally independent of the White House to avoid presidential interference, these agencies employ large professional staffs to help them carry out their many functions.

Regulatory Commissions. Employing large professional staffs, **regulatory commissions** make policies affecting various sectors of the American economy.

Although their members are appointed by the president, regulatory commissions are formally independent of the White House: that is, they exist outside the cabinet departments and have a special legal status (provided by Congress and supported by the Supreme Court) that protects them from excessive presidential interference. For example, the president cannot fire commission members for political reasons—only for corruption or a similar cause. Of course, the president has considerable influence over many of the commissions; he appoints their members and designates their chairpersons, and so he can choose individuals whose views are likely to be in accord with his own.

Quasi-legislative functions Lawmaking functions performed by regulatory commissions as authorized by Congress.

Quasi-judicial functions Judicial functions performed by regulatory commissions. Agencies can hold hearings for companies or individuals accused of violating agency regulations. Commission decisions can be appealed to the federal courts.

Regulatory commissions have a special legal status in the federal bureaucracy because they are empowered to do more than enforce the law or implement public policy. Most of them have the authority to formulate rules that regulated companies or individuals must adhere to. In this sense, regulatory agencies are performing lawmaking, or **quasi-legislative, functions.**[15] For example, in 1972 the Federal Trade Commission issued regulations requiring that all billboard and magazine advertisements for cigarettes contain a warning from the surgeon general's office about the health hazards of smoking. Along with enforcing and making rules, these commissions also have **quasi-judicial functions** because they sit in judgment on companies or individuals accused of violating the regulations. Violators of commission rules get their first court-like hearing before commission officials. A company or person found guilty of such violations may appeal directly to the federal court system.

Government corporations Public agencies that carry out specific economic or service functions (such as the U.S. Postal Service, which delivers the mail, and the Tennessee Valley Authority, which provides power and other services to its namesake region) and are organized in the same way as private corporations. Other examples include the Corporation for Public Broadcasting (as well as the Public Broadcasting System and National Public Radio), the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation.

Government Corporations. A unique form of bureaucracy, the **government corporation** is designed to act more like a private business than a part of government. As we have already noted, some are actually government-sponsored enterprises that are created and launched by the government to perform special functions but that are effectively private organizations. Some of these enterprises have been extremely successful. For example, the Communication Satellite Corporation (COMSAT) was established by an act of Congress in 1962 to facilitate the launching of telecommunications satellites. During those early days of space exploration, government support was necessary to help undertake such a risky enterprise. Private companies were willing to invest in telecommunications, but they needed to have the government as a partner. Initially, up to 50 percent of COMSAT could be owned by the private-sector firms that used the agency's services and three members of COMSAT's fifteen-member board of directors were appointed by the president. But in most other respects, the organization was intended to act like a private corporation.[16] Over time, Congress privatized COMSAT by allowing private firms to purchase the rest of COMSAT, and by the 1990s it was a wholly private corporation that retained a special relationship with the federal government. Finally, in 1999, Congress voted to end COMSAT's special status, and in 2000 the company was purchased by Lockheed Martin Corporation, one of the world's largest defense and aerospace contractors.

Other groups of government corporations are located within cabinet departments, although they tend to operate somewhat independently. For

example, the Commodity Credit Corporation—the organization through which farm subsidy programs are funded—is part of the U.S. Department of Agriculture. But perhaps the best known of these organizations, the *Tennessee Valley Authority (TVA)* and the *U.S. Postal Service (USPS)*, exist separately from other federal agencies.

Most government corporations carry out specific functions, such as generating electric power or delivering the mail. Most are intended to be self-financing agencies, but that does not always work out as planned. The *Corporation for Public Broadcasting (CPB)* helps promote and fund the *Public Broadcasting System (PBS)* and *National Public Radio (NPR)*. In the past, the CPB has provided significant subsidies for public radio and television, either through government grants or by raising funds privately. That support has decreased in recent years, leaving PBS- and NPR-affiliate stations with the task of raising money through donations and sponsorships.

CRITICAL THINKING

Should government corporations that provide public services (like the postal service or public television) be expected to "pay their own way"?

The *Federal Deposit Insurance Corporation (FDIC)* insures savings accounts in many local banks. It was intended to be self-funding through the fees it assesses member banks. In the late 1980s, however, failures of member banks forced FDIC officials to borrow money from the federal treasury and to actually consider asking Congress for tax dollars to help save it from insolvency. To help it deal with those problems, Congress authorized the creation of still another government corporation, the *Resolution Trust Corporation (RTC)*. From August 1989 until its termination in December 1995, the RTC assumed control of the assets of banks declared insolvent by the FDIC and attempted to reduce the government's losses by selling those assets to private bidders. With the crisis over, the RTC was merged into the FDIC.

Other Agencies. Besides these five types of federal agencies, there are literally hundreds of boards, commissions, institutes, foundations, endowments, councils, and other organizations in the federal bureaucracy. They range in importance from the Federal Reserve System (better known in the news media as the "Fed"; see Chapter 14, on domestic policy and policymaking) and the National Science Foundation (NSF) to the National Telecommunications Information Administration and the U.S. Metric Board.

A Diverse Institution

Our profile of the federal bureaucracy makes it clear that we are not discussing a single-minded, monolithic institution. Instead, we see that the federal bureaucracy is composed of hundreds of distinct organizations employing millions of individuals—a powerful institution so large and complex that to the uninformed citizen it seems to be a maze of shadowy structures that is to be viewed with sharp suspicion. Typically, Americans' suspicions regarding public agencies take the form of concerns about both the growth and the power of the federal bureaucracy. As we see in the sections that follow, those concerns are also built on myths.

Growth of the American Bureaucracy

Many Americans believe that the government bureaucracy has grown too large and has become a burden on the American public. According to the myths of bureaucracy, bureaucratic growth is an inevitable result of the incompetence and unresponsiveness of government agencies. An incompetent bureaucracy wastes resources. If government workers were more productive, they would use fewer resources, and the result would be smaller but more efficient public agencies. To many Americans, excessive bureaucratic growth is also related to unresponsive government agencies. Unresponsive agencies are more likely to serve their own needs—including the need to grow and expand. A truly responsive bureaucracy would aim to serve the general public's wishes for less, not more, government intrusion.

Has bureaucratic growth been excessive? Is that growth a result of bureaucratic incompetence and unresponsiveness?

Overview of Bureaucratic Growth

The framers of the Constitution said little about how they thought the policies of the newly established republic should be administered. We do know that they considered bureaucracy a vital institution in our constitutional system. For instance, in the "Federalist No. 70," Alexander Hamilton acknowledged that a badly administered government "must be . . . a bad government."

The Constitution makes the president responsible for ensuring that the laws and policies of the national government are carried out. The tasks that the framers foresaw for the national government were relatively few and easy to implement. Executing the law meant keeping the peace, defending the country from foreign intruders, collecting import duties and other taxes, and delivering the mail. To the framers, charging a single individual with overseeing the administration of government did not seem unreasonable. Consequently, in Section 2 of Article II, they made the president both commander in chief of the armed forces and the chief executive officer to whom the heads of all administrative departments would report.

Initially, the framers' assumptions about the administration of the government were correct. The federal bureaucracy was small, and its functions were simple enough to permit the president to oversee most national government tasks.[17] In 1802, for example, there were fewer than ten thousand civilian and military federal employees. Almost all the civilian employees were tax collectors or postal workers. But those were simpler times. The country was rural, and the people were more self-sufficient. When Americans did turn to government for help in building roads or establishing schools, they usually turned to state and local governments rather than to the nation's newly settled capital in Washington, D.C.

Of course, the number of federal workers did grow during these early years. By the 1820s, the national government's civilian bureaucracy had more than doubled. However, that growth did not represent a major expansion of government activities. No major new agencies were created during this early period. Most of the growth in federal government jobs took place in the Post Office Department, where nearly 75 percent of the federal work force was employed.

A different pattern began to emerge after the Civil War, as Americans demanded more and better government services from elected officials at all levels. During the last half of the nineteenth century, the number of federal agencies doubled. The major agencies established during that period included the Department of Agriculture and the Interstate Commerce Commission. Federal workers were being hired not just to deliver the mail, but also to regulate railroads, assist farmers, manage the federal government's vast land holdings, survey and help settle newly acquired territories in the West, and promote American commerce overseas. The changing nature of government is evident when the relative size of the post office is considered. In 1861, the post office accounted for 80 percent of all federal civilian jobs; by 1901, post office positions made up only 58 percent of such jobs.

Rapid bureaucratic expansion continued through the first decades of the twentieth century. Between 1901 and 1933, the number of major federal agencies increased from 90 to 170. Responding to the economic and social problems of the Great Depression, President Franklin D. Roosevelt proposed, and Congress enacted, many new federal programs and agencies, especially in the areas of employment and business regulation. Federal employment jumped under Roosevelt's New Deal, and the demands of World War II led to further growth in the bureaucracy and the expansion of government responsibilities in domestic and foreign affairs.

Putting that growth in perspective, although the federal civilian work force numbers in the millions, it constitutes a relatively small—and shrinking—part of the total U.S. labor force. For example, within the total U.S. labor force, federal civilian workers accounted for 2.1 percent of all employed individuals in 1998. That is, just slightly more than 2 of every 100 employed Americans worked for the federal government. During World War II, that figure was as high as 4.7 federal workers for every 100 Americans, and even as recently as 1970 there were 3.7 civilians on the federal payroll for every 100 people in the U.S. labor force. Thus, when viewed as part of the U.S. labor force, the federal bureaucracy does not look quite as big and is in fact shrinking in size each year. Another indicator of the relative decrease in the size of the federal bureaucracy is found in the number of civilians employed in the federal executive branch. In 1970, there were 14.4 federal employees for every 1,000 Americans; in 1999, that figure was 9.9 per 1,000 population.[18]

Nor does the federal bureaucracy seem too big when its work force is compared with the number of civilian workers employed by state and local governments. In 1998, the federal government employed fewer than one out of every four full-time government workers in the United States. That year, state and local

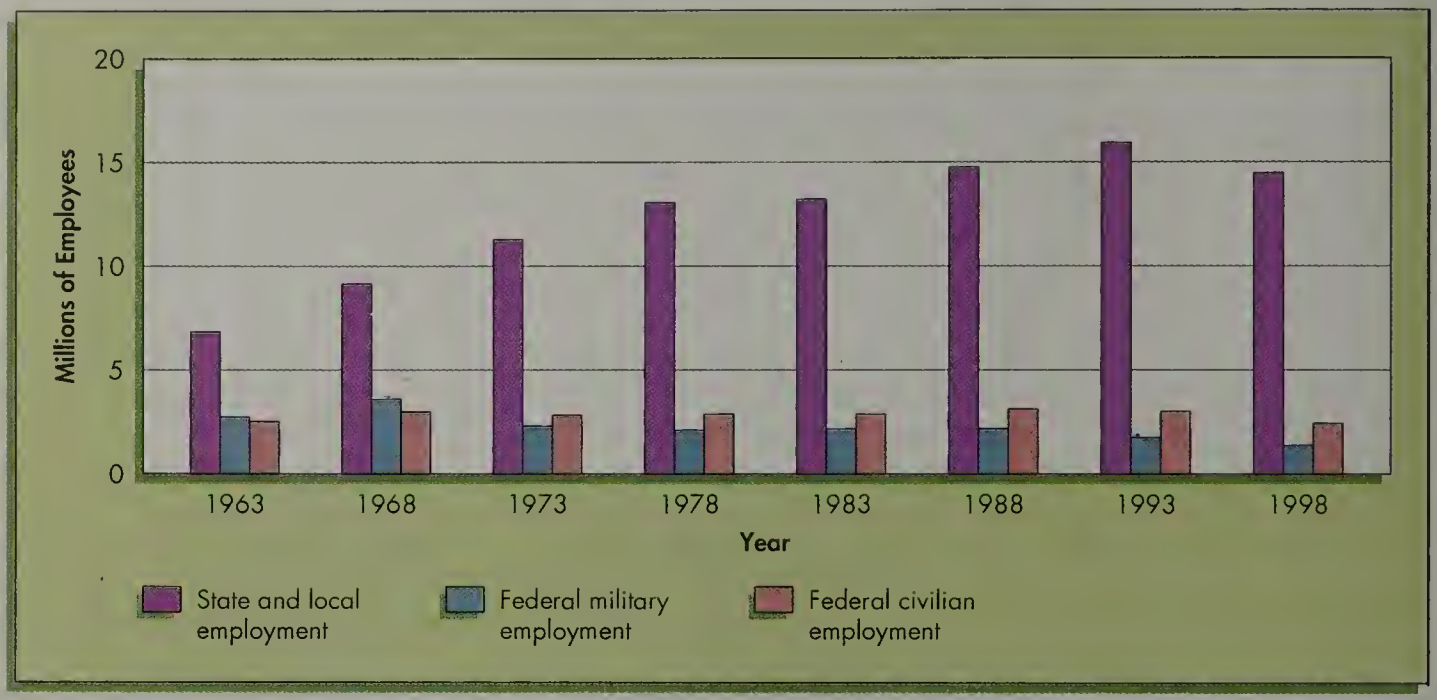


FIGURE 12.3
Relative Size of the Federal Bureaucracy

governments employed 14.48 million people full-time, whereas Washington employed 3.85 million. When federal military personnel are subtracted from the totals, the federal work force is seen to be even smaller (2.45 million full-time employees) relative to those at the state and local levels. Furthermore, the relative shrinking of the federal civilian work force has been a significant trend for at least three decades (see Figure 12.3).

In other words, while 2.45 million federal civilian employees may seem like a lot, in relative terms the federal bureaucracy is not as big as it appears at first glance. Nevertheless, 2.45 million is a great many people, and the question of why there are so many federal bureaucrats is unavoidable.

Another indicator of bureaucratic expansion is the growing federal budget. George Washington ran the government for about $1.5 million a year. By the time Andrew Jackson took office in 1829, the federal budget had increased tenfold, to over $15 million. By 1940 the budget had climbed to $9.5 billion, and in 1960 the U.S. government spent a little over $92 billion. The greatest growth in federal expenditures, however, took place over the next quarter-century. In January 1987, President Reagan submitted the first trillion-dollar budget proposal to Congress, and federal government spending continued to climb under Presidents Bush and Clinton (see Chapter 14, on domestic policy and policymaking). In February 2000, the Clinton Administration submitted a budget of $1.835 trillion for fiscal year 2001, and it projected that spending would reach the $2 trillion level in fiscal 2004.

Explaining the Growth of the Bureaucracy

What accounts for the growth of the bureaucracy and the number of bureaucrats since the late 1800s? Was all this growth the result of bureaucratic incompetence and unresponsiveness? Many observers believe that the growth can be attributed directly to the expansion of the nation itself. There are a great many more of us—more than 274 million in 2000, compared with fewer than 5 million in the 1790s—and we are living closer together. Not only do the residents of cities and suburbs require many more services than did the predominantly rural dwellers of the early 1800s, but the challenges of urban and industrial life have intensified, outstripping the capacity of families or local and state governments to cope with them. Thus the American people have increasingly turned to the national government for help.

There is considerable evidence that the growth of bureaucracies is "of our own making."[19] Public opinion polls indicate widespread public support for expanding federal involvement in a variety of areas (see Chapter 14, on domestic policy and policymaking). Even when public support for new programs is low, pollsters find Americans unwilling to eliminate or reduce existing programs. Furthermore, the public's expectations about the quality of service it should receive are constantly rising. The public wants government to be more responsive, responsible, and compassionate in administering public programs. Officials have reacted to these pressures by establishing new programs and maintaining and improving existing ones.

The federal bureaucracy has also expanded in response to sudden changes in economic, social, cultural, and political conditions. During the Great Depression and World War II, for example, the federal bureaucracy grew to meet the challenges these situations created. Washington became more and more involved in providing financial aid and employment to the poor. It increased its regulation of important industries and during the war imposed controls over much of the American economy. As part of the general war effort, the federal government also built roads and hospitals and mobilized the entire population. When these crises ended, the public was reluctant to give up many of the federal welfare and economic programs implemented during the time of emergency.

CRITICAL THINKING

Would you continue to support your congressional representative if he or she voted to cut off funding for student loan programs?

Political leaders, too, foster bureaucratic growth. Government bureaucracies are often enlarged by presidents running for re-election so that they can leave their mark on history. We have noted the large expansions of federal bureaucracies that occurred under Franklin Roosevelt's New Deal and Lyndon Johnson's Great Society programs. Congress, however, is no innocent bystander. Bowing to pressure to "bring home the bacon" for the folks back home, even the most conservative members of Congress find themselves voting for new or larger programs to serve their constituents.[20]

There is also considerable evidence that the bureaucracy itself plays a role in developing and expanding government programs.[21] Some analysts point out that expansion of agency programs and budgets is among the few personal

rewards that bureaucrats can seek, since compensation for public employees is limited and opportunities are very limited. The role of bureaucrats in government growth, however, is not merely self-serving. For example, a 1970 report by Department of Labor staff members found that many Americans were needlessly exposed to work-related illnesses and injuries. Although state and national policies should have dealt with the consequences of work-related disabilities, the staff found no significant program designed to prevent on-the-job ailments or accidents. As a result of that study, Congress created the Occupational Safety and Health Administration (OSHA), which oversees the regulation of workplace conditions.

Thus a number of factors have contributed to the growth of the federal bureaucracy. Although bureaucratic incompetence and unresponsiveness may play a part in governmental expansion, most of the evidence points to the other factors we have discussed.

Bureaucratic Power

Bureaucratic power
The power of government agencies, derived from law, external support, expertise, discretion, longevity in office, skill, leadership, and a variety of other sources.

To operate effectively, government must employ qualified personnel and have the financial resources to enable these employees to carry out their jobs. Another critical ingredient, however, is **bureaucratic power.** Government agencies require power if they are to be competent. This requirement is so great that one student of American public administration has called power the "lifeblood of administration."[22] Without sufficient power, government agencies would be bound to live up to the myth of bureaucratic incompetence, for they would not be able to accomplish their tasks effectively or efficiently.

In spite of the importance of bureaucratic power, the public is very suspicious of the role it plays in American government. Inherent in the myth of an unresponsive bureaucracy is a fear of bureaucratic power and a widespread belief that federal bureaucrats are misusing or even abusing this power. The U.S. constitutional system is rooted in the idea that the people should govern, if not directly, then at least indirectly, through their elected representatives. Yet over the past two centuries, more and more government power has been placed in the hands of bureaucrats. Those who believe in the myth of an unresponsive bureaucracy are likely to worry about the existence and use of bureaucratic power.

Taken to extremes, the public concern about bureaucratic power can turn deadly. On April 19, 1995, there was a huge explosion in a nine-story office building housing federal government agencies in downtown Oklahoma City; the explosion killed 168 federal workers and other citizens who happened to be in or near the building at the time. The impact of the tragedy was magnified by the death of many children who attended a day care facility on the second floor of the building, just a few yards from the explosive device. Law enforcement officials traced

The Tragic War on Government

The April 19, 1995, terrorist bombing of a federal office building in Oklahoma City has been traced to domestic extremists who believe that government agencies are part of a conspiracy to take away the freedom of American citizens. The blast killed 168 people, including 19 children.



the bomb to individuals who had ties with antigovernment groups that had formed in twenty-six states. Many of those groups—often called "militias"—feared the tyranny of the federal government. Some members of these groups regarded the Bureau of Alcohol, Tobacco, and Firearms (BATF), the Federal Bureau of Investigation (FBI), and other federal agencies as the enemy. Law enforcement officials investigating the tragic attack on the federal building in Oklahoma City argued that those involved in the bombing saw their actions as a preemptive attack on the tyrannical federal bureaucracy.

The Sources of Bureaucratic Power

Where do bureaucracies get the power they need in order to function? Some of it is derived from the legitimacy of the laws they are required to enforce or the policies they are asked to implement (see Chapter 2, on the Constitution). But often neither the legitimacy of these laws nor these policies are enough. There are other key factors to look for.[23]

External Support. A major source of bureaucratic power is the support that government agencies receive from the general public, special-interest groups, the media, Congress, or the White House. The greater an agency's external support, the more power it is likely to wield. Throughout the 1950s and 1960s, for example, the Federal Bureau of Investigation (FBI), under Director J. Edgar Hoover, had a great deal of support from the general public. After Hoover's death and a series of revelations about questionable actions taken by the FBI, the

agency's reputation and support declined. The directors who succeeded Hoover had to work for many years to restore public confidence and to rebuild the agency's power.

Another form of external support comes from coalitions formed between bureaucracies and other actors in the American political arena. Thus, agencies sometimes participate in political alliances that might include their clientele group, other agencies, lobbyists for special interests, and members of Congress who preside over relevant committees and subcommittees.[24] Analysts call these alliances **policy subgovernments** because the actors effectively exercise authority in a narrowly defined policy area.

Policy subgovernments Alliances among specific agencies, interest groups, and relevant members of Congress. In their most extreme forms, called cozy triangles, these alliances may effectively exercise authority in a narrow policy area, such as tobacco price supports. Other forms of subgovernments, called issue networks, involve a large number of participants with different degrees of interest.

In their most extreme forms, often called *cozy triangles*, these subgovernments can be powerful coalitions (see Chapter 8, on interest groups). The success of any cozy triangle coalition depends on its members' ability to limit participation to a few "insiders" and to maintain a low public profile. Until recently, one of Washington's most successful cozy triangles was the tobacco subgovernment, which focused on policies related to promoting the consumption of tobacco products. The three main sets of actors in that subgovernment were members of Congress from tobacco-growing states (for example, North Carolina, South Carolina, and Kentucky) who sat on the Agriculture and Appropriations committees; lobbyists representing tobacco growers and cigarette-manufacturing companies; and bureaucrats from tobacco-related programs at the Agriculture and Commerce Departments. Meeting regularly to work out favorable policies, these actors created programs that helped tobacco farmers and the giant tobacco industry to fend off attacks from those who sought policies contrary to their interests.

In 1964, the cozy world of the tobacco subgovernment began to fall apart. That year, the surgeon general of the United States issued a report linking cigarette smoking to lung cancer, heart disease, and emphysema. The report was followed by a Federal Trade Commission proposal that cigarette packages and advertising contain health warnings. The cozy triangle no longer had the low visibility that had made it so effective before the surgeon general's announcement. Nevertheless, the tobacco subgovernment remains intact today, although its members can no longer easily set public policies related to tobacco. For years they fought a constant battle to maintain what remained of their subsidy and international marketing programs.[25] More recently, members of Congress and state and local officials, in conjunction with a variety of federal agencies—from the Public Health Service and the Environmental Protection Agency to the Food and Drug Administration—have mounted a direct attack on the tobacco industry that indicates greater regulation of cigarette production and consumption in the future.[26]

At the opposite extreme from cozy triangles are subgovernments organized as issue networks. Issue networks involve a large number of participants with different degrees of interest in and commitment to the policies and problems that bring them together. An issue network is an open and at times highly visible subgovernment. The individuals taking part in it may come and go, and often they

have neither the time nor the leadership to develop consistent shared attitudes toward policy. Bureaucrats also play a role in issue network subgovernments, but that role often depends on their grasp of the issues and their willingness to dive into the open policymaking process.[27]

Environmental policymaking is a classic example of an issue network in action. It has been highly visible since the mid-1960s. The challenge of environmental protection has attracted a multitude of actors, including dozens of members of Congress, hundreds of interest groups with varying points of view, and a host of media and academic observers. In the middle of that issue network sits the Environmental Protection Agency (EPA), which was created in 1970 to coordinate the implementation of federal environmental policy. The EPA maintained a leading role in the environmental issue network during the 1970s quite successfully. Beginning in 1981, however, the agency's situation changed as it experienced a crisis.

The Reagan administration came to office intent on changing the direction of environmental policy through deregulation and reform. It planned to use the EPA to implement these changes by instituting new agency policies and radically altering the way in which environmental regulations were enforced in established program areas. The administration's strategy basically ignored the interests of some of the major actors in the existing environmental policy issue network. Incensed at the EPA's new positions, environmental interest groups formed alliances to defeat Reagan's initiatives in a variety of program areas. A coalition of conservationists and others concerned about environmental policy used direct lobbying and the media to press the White House and Congress for major changes in the Reagan approach. In 1983 the administration acknowledged defeat by replacing the controversial head of the EPA, Ann Gorsuch Burford, with William Ruckelshaus, who was highly regarded by environmental interest groups and who had been the first administrator of the agency when it was created during the Nixon presidency.[28] Ruckelshaus spent two years undoing the administrative changes made during Burford's tenure and re-establishing the EPA's credibility within the environmental issue network.

Whether it takes the form of public support or coalitions with special-interest groups, external support plays an important role in shaping and directing bureaucratic power. The cases of the tobacco and environmental policy subgovernments indicate just how significant that support can be for individual agencies.

Expertise. An agency's power can also stem from its expertise. In matters of national defense, America's top policymakers often turn to experts at the Pentagon for advice. On issues involving public health, they ask the opinion of the surgeon general or the Centers for Disease Control and Prevention. On international subjects, the Central Intelligence Agency (CIA) is regarded as the primary source of expert information. As long as such expert information is deemed accurate and reliable by those who use it, it enhances the power of the agency. But if the credibility of that information is brought into question—as

happened to the CIA in the late 1980s and early 1990s, when it failed to accurately predict the collapse of the Soviet bloc (see Chapter 15, on foreign and defense policies)—the public immediately questions the competence of the agency and its officials. Once the credibility of a bureaucracy's expertise is put in doubt, that bureaucracy's influence and power are likely to deteriorate.

Discretion. Bureaucrats are often permitted to use their own judgment in carrying out public policies and programs. Congress and the White House frequently formulate policies in ambiguous and vague terms. When President John F. Kennedy issued a mandate to the National Aeronautics and Space Administration to land an American on the moon by 1970, he could not tell the agency exactly when and how to do it; those details were left to the discretion of NASA officials. Discretion can be an important source of power, for it gives some individuals within a bureaucracy considerable flexibility in deciding how to do their jobs.

Longevity in Office. The merit system, which protects most federal employees from being fired for political reasons, provides still another source of bureaucratic power. Because it is extremely difficult to dismiss a federal civil servant without a good, nonpolitical cause, civil servants usually stay in their jobs for a long time. Presidents and members of Congress come and go, as do the presidential appointees who head federal agencies, but the average bureaucrat serves through several presidential and congressional terms in office. As a result, elected officials and their appointees often find themselves relying on career civil servants to keep the agencies functioning. Thus, longevity in office can mean considerable power for the experienced bureaucrat.

CRITICAL THINKING

Should we impose a term limit on the number of years an individual can serve in a particular government job?

Skill and Leadership. External support, expertise, discretion, and longevity in office will not accomplish much by themselves. Potential wielders of bureaucratic power must have the talents and will to use those resources. That is as true for agencies as it is for individuals. Without skills and leadership, even the most resource-rich federal agency will not be able to accomplish its objectives.

The Defense Department, for all its potential power and influence, would fail in its search for White House and congressional support if the secretary of defense did not provide effective leadership. During the Reagan administration, for example, Secretary of Defense Caspar ("Cap") Weinberger gained a reputation as a successful advocate for increasing defense expenditures. When some members of the Reagan administration proposed reductions in the defense budget, Weinberger managed to convince the president that defense "is not a budget issue. You spend what you need." In most instances, Weinberger was able to get the president to protect his department's budget.[29]

In short, power is the fuel that gives bureaucracies the energy to carry out their missions. A bureaucracy without power or the potential to exercise power is truly a waste of public resources. The question is not whether bureaucratic

power exists or should exist, but whether that power is responsive to the wishes of the American public and its elected representatives.

Limiting Bureaucratic Power

The American political system does provide effective means to limit bureaucratic power and keep it responsive. It offers a variety of internal and external checks designed to contain bureaucratic influence and authority within acceptable bounds.

Self-Restraint and Limited Resources. Some of the curbs come from bureaucratic self-restraint. In the mid-1970s, certain regulatory commissions took the initiative in relaxing the controls they had previously exercised over sectors of the American economy. For example, the Civil Aeronautics Board (CAB) intentionally eliminated many barriers to competition among the nation's major airlines. That initiative proved so popular that Congress formally deregulated the airline industry in 1978 and eliminated the CAB altogether in 1985. Although no other regulatory commission has been abolished, most exercised similar self-restraint during the late 1970s and throughout the 1980s.

The quantity and quality of available resources also put limits on bureaucratic power. The Internal Revenue Service (IRS), for example, does not have enough auditors and agents to review everyone's tax return and investigate all suspected cases of tax fraud. In fact, the IRS is able to investigate only a small percentage of the returns filed each year. Therefore, the competence of its auditors and agents determines how effectively the IRS collects taxes, as does the agency's increasing use of computers to process tax returns. Ultimately, however, the IRS's best tool is the individual taxpayer's fear that his or her return might be one of the few subjected to a detailed audit.

The White House. As the formal head of the executive branch, the president can exercise some control over the federal bureaucracy by carefully selecting the people he appoints to office or promotes. Before taking office in 1981, Reagan established an appointment system that attempted to choose for office only people who would be loyal to him and would be willing to pursue his objectives of reduced government activity forcefully.[30] In addition, the Reagan administration functioned through a system of what one observer termed "jigsaw puzzle management," under which agency managers were told to carry out policies and programs while being kept in the dark about the overall strategy being pursued. The impact of these strategies was to reduce the overall effectiveness and influence of federal bureaucrats while enhancing the power of administration officials.[31]

The White House can also influence the funding of federal agencies and their programs. Typically, federal agencies make their budget requests through the Office of Management and Budget, which evaluates the agencies' proposals and often modifies them to conform with presidential priorities. Even after

Congress has appropriated funds and other resources for agency programs, the White House retains control over the allocation of funds from the Treasury Department. In addition, the president can require federal agencies to adopt certain management methods and budgetary techniques. In 1965, for example, President Johnson ordered all federal agencies to adopt an agency-planning technique that originated in the Department of Defense. When Jimmy Carter became president in 1977, he ordered federal agencies to adopt a budgeting approach that he had used when he was governor of Georgia. In both instances, the management techniques were intended to give the president greater control over agency decisions (see the discussion on presidential reforms below).[32]

Congress. Congress can also impose limitations on the power of federal agencies. The Constitution authorizes Congress to establish public programs and arrange for their implementation. Yet Congress has not always been detailed and explicit in its instructions to federal agencies. Vague legislation has led many critics to argue that Congress is not working hard enough to limit or control bureaucratic power, and bureaucrats themselves have complained about the lack of specificity. In 1979 one administrator openly criticized a congres-sional act that, in a single line of statutory language, required his agency to establish a program to protect the rights of the handicapped—with no details or guidance. "They're frequently very unhappy with what we do after they give us a mandate like that," he noted. "But the trouble is, the mandate is broad, they deliberately are ambiguous where there is conflict on details, and they leave it to us to try to resolve the ambiguities."[33]

Implied in such criticism is the belief that Congress has a right to exercise much more legislative control than it does today by expanding or narrowing an agency's authority to take action. In a few instances, Congress has tried to provide federal agencies with detailed instructions. The Clean Air Act Amendments of 1970, for instance, set a number of specific deadlines for action by the Environmental Protection Agency (EPA). These challenging goals ultimately proved too difficult to reach on schedule. Delays and postponements were common. Critics of too much congressional interference in the implementation process point to those problems when they are asked why Congress often shies away from supplying many details in its legislation.[34]

Although Congress finds it difficult to control or limit bureaucratic power through detailed legislation, it has other tools with which to accomplish these ends.[35] Congress reviews agency budget requests each year, and it can use that opportunity to scrutinize agency operations. Almost every congressional committee has jurisdiction over a group of federal agencies, and these committees sometimes exercise their oversight responsibilities by holding public hearings on agency operations. In 1988, for example, Representative Douglas Barnard, Jr., from Georgia, chairman of the House Government Operations consumer subcommittee, launched a two-year investigation of the operations of the IRS. That investigation eventually led to administrative changes within the agency, including the establishment of an IRS ethics program. Similar hearings were held a

decade later, again resulting in major changes in agency procedures. The result has been an effort to make the IRS more customer-oriented in its treatment of taxpayers.[36]

Individual members of Congress often intercede with specific agencies on behalf of their constituents. Members of Congress can also order the General Accounting Office to conduct an audit or investigation of any federal program. Finally, the role of the U.S. Senate in confirming political appointments provides that chamber with a unique opportunity to review bureaucratic actions.

CRITICAL THINKING

Should we prohibit members of Congress or their staff from contacting a federal agency on behalf of a constituent?

The Courts. The courts also play a role in limiting the power of the federal bureaucracy.[37] Until 1937, the judiciary often agreed to hear cases challenging the authority given to federal agencies by Congress. Today the courts are much less likely to entertain such cases; nevertheless, they pay considerable attention to complaints that a federal agency has exceeded its authority or acted in an arbitrary or unreasonable way when carrying out its duties.

Some of the courts' power over the federal bureaucracy stems from specific provisions of the U.S. Constitution, such as the prohibition against "unreasonable searches and seizures" or the guarantees that citizens shall not be deprived of "life, liberty, or property without due process of law." These powers were reinforced by the Federal Tort Claims Act of 1946, which permits (with a few specified exceptions) Americans to sue the federal government for damages incurred through government actions. Congress has even made special provisions for taking legal action against specific agencies. Under provisions of the 1988 tax laws, for example, a taxpayer may sue any IRS employee for damages if the agent seeks to collect taxes in a reckless way or with intentional disregard of tax laws. The prospect of being challenged in court has proved to be an effective means of control.

The courts also play a role in shaping the relationships between the bureaucracy and the other branches of government. From time to time in our history, controversies have arisen about whether government agencies were subject to presidential or congressional control. Sometimes these have taken the form of court cases. In some of these, the courts have sided with Congress, and in others they have deferred to the White House. The Supreme Court has tended to favor the presidency in recent years,[38] but over the past two hundred years there has been no consistent answer to the question of who runs the bureaucracy. Thus, the courts remain a major factor in the life of the federal bureaucracy.

Other Restraints. Agency competition among federal bureaucracies is another source of limits on bureaucratic power. Many agencies have competitors in the federal government—other agencies that vie for the same set of authorizations or appropriations. The different branches of the armed forces, for instance, compete with one another for a bigger slice of the defense budget. Although such competition may seem inefficient, it does help impose restraints on the power of the military bureaucracies by leading each to keep an eye on the activities of the others.

A strong sense of professionalism and responsibility on the part of public-sector employees can act as a brake on bureaucratic power, especially when someone within an agency exposes inappropriate, unethical, or questionable activities. Ernest Fitzgerald, a civilian analyst at the Defense Department, went public with his concerns about major cost overruns on the purchase of C5-A transport planes by the U.S. Air Force. His complaints led to an investigation of those cost overruns and several new management policies. People like Fitzgerald, who risk their careers to halt bureaucratic misconduct, are called **whistle-blowers.** Whistle-blowers usually pay a high price for their honesty and candor. In many instances, blowing the whistle on an agency can make one an outcast in the organization and end one's career.[39] Today whistle-blowers have some protection under federal personnel laws, and at least one agency (the National Aeronautics and Space Administration) has a special telephone number that whistle-blowers can call. Each agency also has an **inspector general's** office,[40] which can investigate complaints or suspicious behavior.

Whistle-blowers Employees who risk their careers by reporting corruption or waste in their agencies to oversight officials.

Inspector general An official in a government agency assigned the task of investigating complaints or suspicious behavior.

By investigating leads that might uncover major problems, an alert press corps can also restrain bureaucratic power. The Freedom of Information Act and other public disclosure laws restrain bureaucratic power as well. Citizen lobbies, such as Common Cause and Ralph Nader's Public Citizen (see Chapter 8, on interest groups), perform much the same function at times.

Limits and Responsiveness. As we have seen, although it is impossible to guarantee that bureaucratic power will not be misused or abused, mechanisms for limiting that power do exist. Thanks to these potential and actual restraints, bureaucratic power in the federal government has a good chance of being controlled.

In many respects, these limits work to make government agencies more, rather than less, responsive. The problem is that being responsive to one constituency group often means being perceived as unresponsive by others. Consumer groups, for example, often criticize the Department of Agriculture for being too supportive of farming interests and not sufficiently attentive to the needs of consumers. Similarly, many businesses complain that the Environmental Protection Agency and other regulatory agencies fail to take their interests and needs into account, whereas those who support regulation believe that the regulators are on the right track.

Bureaucratic Problems and Reforms

If the myths of bureaucratic incompetence and unresponsiveness do not reflect reality, then why do so many Americans continue to complain about the way government operates? This is somewhat mysterious, for students of public administration find that many citizens are quite satisfied with most of their routine

encounters with bureaucracies.[41] The complaints that most Americans have about the federal bureaucracy may reflect more what they hear about others' ordeals than what they have experienced themselves. There are, however, problems with the bureaucracy that help keep the myths alive.

Bureaucratic Pathologies

At their best, federal bureaucracies serve the public interest. At their worst, they seem to conduct themselves in ways that feed the myths of incompetence and unresponsiveness. Students of American government describe these behaviors as **bureaucratic pathologies**—or "bureaupathologies," for short.[42]

Bureaucratic pathologies Behaviors by bureaucrats that feed the idea that the bureaucracy is incompetent and unresponsive. They include clientelism, incrementalism, arbitrariness, parochialism, and imperialism

Clientelism. In very general terms, public agencies attempt to work in behalf of the public interest. On a day-to-day basis, however, bureaucracies must deal with those served by the programs being implemented—the agency's clientele. The Department of Agriculture works with farmers, the Department of Education with educators, and so on. This daily contact with their clientele is an absolute necessity for employees in these agencies if they are to be responsive to the needs of those they serve. But this constant contact can become pathological when bureaucrats begin to display favoritism toward their clientele's interests, even when those interests do not serve the public good.

The case of the tobacco subgovernment discussed earlier is a classic example of clientelism at work. Bureaucrats within the Department of Agriculture who had worked with tobacco farmers for decades supported their clients' interests even though they were contrary to emerging government policies against smoking.

Similarly, the staffs of government regulatory commissions are sometimes accused of being "captured" by those they regulate. For many years the now defunct Civil Aeronautics Board issued policies and decisions that clearly favored the interests of the nation's major airlines rather than those of airline passengers.

Incrementalism. Federal agencies are created to carry out programs, and we expect them to do so with consistency and fairness. But the conditions under which agencies operate competently are not stagnant. Conditions and circumstances change—sometimes quite swiftly. One would expect public-sector agencies to adapt to those changes as quickly as possible, but often they resist change or make only small, incremental adjustments. At times this response may be intentional. For example, Secretary of Defense Richard Cheney and others in the Bush administration resisted calls for radical reductions in the Pentagon's 1991 federal budget, despite the major changes that were occurring in the former Soviet Union and Eastern Europe (see Chapter 15, on foreign and defense policy).

Incrementalist behavior can become pathological when it threatens the very program or service that the agency is supposedly providing. The U.S. military has often been plagued by pathological incrementalism. The navy was slow to

recognize the importance of air power in the 1920s until, in a widely publicized demonstration of the point, a maverick army general, Billy Mitchell, sank a warship. During that same period, it was equally difficult to convince many army leaders to abandon horse cavalry units. Bureaucracies tend to move cautiously and slowly, and sometimes a snail's pace can prove much too dangerous and costly.

Standard operating procedures (SOPs) Regularized procedures used in public agencies to help conduct administrative business effectively and efficiently.

Arbitrariness. A competent bureaucracy is one that does its job effectively and efficiently. To achieve this condition, the agency often must adopt **standard operating procedures,** often called **"SOPs."** There are times, however, when regularized procedures can interfere with responsiveness or replace common sense, and then arbitrariness becomes a factor. For example, there are stories about people losing their welfare or unemployment benefits because they failed to show up for an appointment with a social worker or forgot to file a certain form on time. A bureaucrat who is unwilling to listen to excuses or explanations can hardly be faulted for sticking to the rules, but he or she can be faulted for being too arbitrary and losing sight of why a program or procedure exists. Bureaucracies often serve people with special needs or individuals facing special circumstances. Even if the aim is efficiency, arbitrary behavior can prove harmful under such conditions.

Arbitrariness also arises when a bureaucrat acts without legal authority. While a police officer has the authority to stop a driver whose vehicle is swerving dangerously, he or she cannot use a nightstick to beat the car's driver or occupants without cause.[43]



"Then it's agreed. The problem's not our fault, because the country's run by low-level bureaucrats."

Parochialism. In order to perform their functions effectively, some government agencies believe it is necessary to focus attention on the job at hand. Such concentration on getting the job done can result in another pathological behavior—parochialism.

For example, the job of the army's Rocky Mountain Arsenal was to produce and store chemical and biological weapons, and for most of its thirty-year existence that organization carried out its work without paying much attention to the damage it was doing to its surroundings. That parochial attitude had both short-term and long-term effects. During the early 1970s, a series of earth tremors in the Denver region were traced by one geologist to a weapons disposal process being used at the arsenal. After months of denying any link between its activities and the disturbances, the arsenal temporarily halted the operation. The tremors came to an end, and the army finally agreed to discontinue the process permanently. Years later, when the army closed the arsenal, state and federal environmental protection investigators found that the land in and around the weapons facility was so contaminated that it might remain unusable for hundreds of years. Taken to its extreme, this type of pathological behavior can prove deadly.

Imperialism. As we noted earlier, bureaucracies need power in one form or another to carry out their jobs. Therefore, bureaucrats often seek to obtain the resources they need to accomplish their assignments. At times, this means expanding agency operations and taking on more responsibilities and personnel. In some agencies, this drive for expansion becomes an end in itself—a key sign of the pathological behavior we call bureaucratic imperialism.

Imperialism may involve getting a bigger slice of the federal budget pie, or it may mean starting new programs or even taking over another agency's functions. Whatever form it takes, most Americans do not regard expansion for its own sake as a desirable feature of bureaucratic operations. During the 1950s and 1960s, for example, the U.S. Army built up its "aviation" units through the acquisition of enough helicopters to make it the third-largest air force on earth, after the U.S. Air Force and the air forces of the Soviet Union. The army leadership rationalized the growth of its aviation units as a means for improving the mobility and effectiveness of land troops. This upset air force generals, who constantly argued that they should have exclusive control of all airborne military equipment and personnel.[44]

Calls for Reform

These pathological behaviors help explain why the myths of incompetent and unresponsive bureaucracies remain popular today. Americans perceive these problems as the rule rather than the exception. It is not surprising, therefore, to hear calls for bureaucratic reform.

Various Approaches. Those who focus on the need to deal with bureaucratic incompetence advocate the elimination of certain government programs and

CLOSER TO HOME



Government as Innovator!

The media often pay a great deal of attention to what is wrong with government and to horror stories about bureaucratic errors. The good news about government—the accomplishments, devotion, and hard work of government workers—is rarely mentioned and almost never celebrated. State and local bureaucracies, in particular, suffer this type of neglect, for the national media tend to focus on federal programs and the agencies that implement them.

Although working in obscurity, state and local bureaucrats have frequently developed interesting and innovative approaches to governmental problems. To help highlight and reward the good work occurring at these less visible levels of government, the Ford Foundation and the Kennedy School of Government at Harvard University established the Innovations in American Government Program, which annually honors the ten most innovative approaches to administrative tasks. Some of the winning innovations include the following.

- In 1991, the city of Philadelphia received an award for its anti-graffiti program. Initiated in January 1984, the effort involved three strategies: public education and community awareness, quick and persistent removal of graffiti, and increased detection and punishment of vandals.
- A 1992 award went to the Automated Traffic Surveillance and Control (ATSAC) system in Los Angeles. An elaborate system started just before the 1984 Olympics, it would cover more than four thousand of the city's congested intersections by 1998. According to studies, the system has eliminated some 8 million car stops for red lights per day, reduced air emissions by 26 percent, and enhanced fuel consumption by 13 percent. It cuts vehicle delays by fifty thousand hours per day, a 32 percent reduction. Roughly one-third of those who live and work in Los Angeles on a typical day have benefited from this system.
- Anoka County, Minnesota, won recognition in 1994 for its Parents' Fair Share program. Targeting divorced or separated parents who failed to provide child support because they lacked jobs or enough income, the program was an alliance among various agencies to help get job training and employment for those who required it. The result in the first two years of operation (1992–1994) was a significant increase in the number and amount of child support payments.
- In 1995, an award honored Genesis, a social service program developed in Boulder County, Colorado. It focuses local resources on comprehensive services to pregnant teens and teenage parents of infants. Established in 1990, Genesis seeks to help those youngsters become nurturing parents and attain the education and skills needed for self-sufficiency, and to expand opportunities for their children.
- One of the 1996 winners was the Florida Healthy Kids, Inc., program, established in 1990 by the Florida legislature. This voluntary program provided comprehensive health care coverage to more than twenty thousand children in eleven school districts across the state in 1996. In 1997, it was expanded to five additional sites, and it will cover forty-five thousand children by 1998. Its $26 million cost is paid by a combination of state funding (50 percent), family premiums (33 percent), and contributions from school districts, hospital authorities, children's services councils, and community groups (17 percent). Administratively simple, the program had greatly reduced the burden

on local hospital emergency rooms and did not lead to overutilization of other medical resources.

- A 1999 winner was the State of Texas for developing a School Performance Review program that has improved the delivery of education in local school districts. A local school board can request that the Texas State Controller's office send a team of financial management experts to the district to analyze all operations, from school cafeterias to transportation services and security. The team examines records, holds focus group discussions, and eventually reports its recommendations back to the district. It was estimated that nearly 90 percent of the team's recommendations are accepted and implemented, and that $85 million in savings has resulted over the first years of the program.

Just as important as these individual examples is the fact that such efforts often become models for other jurisdictions facing similar problems. Florida's Healthy Kids program, for example, has been copied in several other states, and proposals for a national program gained bipartisan support in the 105th Congress when they were introduced in March 1997.

For more information see the "Innovations in American Government" home page at http://www.ksg.harvard.edu/innovations/.

agencies. Others stress the need to reduce agency size and adopt more efficient management techniques. Still others suggest that the work of government agencies should be turned over to the private sector—a strategy called **privatization.**[45]

Privatization The process of turning the work of government agencies over to the private sector.

Ombudsman A person in a government agency who is responsible for hearing citizen complaints or problems related to government programs and policies.

Some reformers believe that government agencies must be made more responsive, more open, and more aware of potential problems. They advocate holding public hearings or establishing an agency **ombudsman** office to hear citizen complaints concerning the agency's programs. Others believe that government agencies would be more responsive if they relied more on marketplace strategies. For example, instead of having a government agency build and operate public housing units, why not provide qualified families with either money or housing vouchers and let them find appropriate rental space themselves within the local private housing market? A similar voucher approach has been advocated for primary and secondary education.[46]

A number of reformers believe that problems of incompetence and unresponsiveness can be solved through agency reorganizations. Some reorganization plans call for increased centralization within federal agencies to enhance coordination and efficiency. Other reorganizations require agency decentralization in an effort to enhance responsiveness and citizen participation.

Still other reforms focus on agency personnel policies, such as hiring practices or compensation levels. For instance, a major accomplishment of reformers during the past 150 years has been the adoption of a merit-based personnel system and the elimination of political appointments within federal agencies. Reformers have also pressed for increasing the pay of government employees to help the federal agencies attract more qualified people to public service.[47]

Presidential Reform Efforts. The current efforts to reform the federal bureaucracy have a nearly century-long history. The most visible reforms have

been led by the White House—often in an attempt to gain greater control over the bureaucracy.

For example, in 1905 President Theodore Roosevelt asked an assistant secretary of the Treasury, Charles H. Keep, to chair a Commission on Department Methods. Over the next four years, the Keep Commission brought about significant changes in record keeping and accounting procedures used by federal agencies. Between 1910 and 1913, President William Howard Taft's Commission on Economy and Efficiency sought to bring more budgetary and managerial coordination to the federal bureaucracy. Although no major commissions were formed by either President Woodrow Wilson or his immediate successors, major congressional initiatives for reform were enacted and implemented during their terms.

Under Franklin Roosevelt, a President's Committee on Administrative Management (known as the Brownlow Committee, after its chair, Louis Brownlow) advocated a major transformation of the federal bureaucracy, one that would greatly enhance the president's role as the chief administrative officer of American government. Under both Harry S Truman and Dwight D. Eisenhower, commissions chaired by former President Herbert Hoover called for still more reforms. Kennedy and Johnson relied more on task forces within their administration to recommend and implement managerial reform. Nixon appointed a council headed by businessman Roy Ash (who later became the head of the Office of Management and Budget) to assess the federal bureaucracy. Gerald Ford was not in office long enough to undertake any significant reform effort, but Carter came into office seeking major changes in the way business was conducted in Washington. Reagan sought advice from a presidentially appointed but privately funded commission, chaired by Peter Grace. The Bush administration took few initiatives in the area of administrative reform, but it did work toward implementing and extending many of the privatization and similar efforts begun under Reagan.

Reinventing government An approach to bureaucratic reform adopted by the Clinton administration that emphasized empowerment and decentralization in order to enhance the performance of government agencies and programs.

As one of his first acts as president, Clinton put his vice president, Al Gore, in charge of an effort—the National Performance Review (NPR)—to improve the performance of the federal bureaucracy. Influenced by the writings of David Osborne and Ted Gaebler,[48] the NPR effort called for the "reinvention" of the federal bureaucracy. The aim of reinventing government was to "put people first" by having agencies cut unnecessary spending, serve their "customers," empower their employees, help communities solve their own problems, and foster excellence in public service.

CRITICAL THINKING

Can government agencies behave like businesses?

The NPR effort differed from past presidential reform initiatives in several important ways. First, it did not stress enhancement of presidential power over the bureaucracy. In fact, its emphasis on empowering government employees and communities seemed contrary to past efforts at centralization. Nor did NPR focus obsessively on cutting the size of government; instead, it sought to improve performance. Furthermore, NPR's strategy was to push reform from the inside—to make government employees a force for reform instead of trying to impose changes from outside or from the top.

It is too early to tell how successful this effort of reinventing government will be in improving the operation of the federal bureaucracy. Some critics have charged that the changes being made are superficial and will not have a lasting impact. Others contend that the NPR approach will ultimately fail. That is, public sector agencies have legal and constitutional obligations that must be fulfilled, and some reforms—no matter how sensible or well-intentioned—do not fit well into the American legal framework. Still others regard the effort as just another White House attempt to control the bureaucracy. The jury is still out.

Conclusion: Expectations and Government Operations

Although these efforts to reform the federal bureaucracy are well-meaning, most are based on the two myths we have examined in this chapter. The reforms aim at making government agencies either more competent or more responsive, or both. Yet there is little evidence to support the contention that bureaucratic incompetence and unresponsiveness are pervasive problems in federal agencies. Instead, the problems of our national bureaucracy may be rooted in the constant effort of federal employees to respond competently to people's expectations.

Americans are demanding citizens. They want government to be efficient and to keep costs to a minimum, while at the same time insisting that agencies spare no resources to get the job done. They want government workers to treat everyone equally, but they feel that bureaucrats should consider the special needs of individual citizens. They want public officials to increase the quantity and quality of public services while insisting that program budgets be cut back. Put bluntly, the principal problems facing our national bureaucracy lie in what the American people expect from it.

Expectations are important for bureaucrats because they spend most of their time trying to live up to the expectations of others—expectations as varied and diverse as the programs they administer.[49] Many of the problems surrounding bureaucratic institutions can be traced to those efforts. If we are going to criticize the performance of our bureaucrats and accuse them of being wasteful or unresponsive, then we must remember that federal government employees are often responding to our demands.

Summary

1. The federal bureaucracy comprises diverse groups of people who occupy a variety of white-collar and blue-collar positions. They are organized under several personnel systems, including the ranks of political appointees, the general civil service system, career personnel systems, and wage systems.

2. Much of what federal bureaucrats do is hidden from public view. Nevertheless, they play important roles in the policymaking process—roles that go beyond merely administering government programs.

3. Organizationally, federal bureaucrats work in hundreds of agencies, including the Executive Office of the President, cabinet departments, independent executive branch agencies, regulatory commissions, government corporations, and other types of agencies.

4. The federal bureaucracy has grown in size and changed in nature over the past two centuries, mostly because of increasing demands by the public and changing conditions in American society.

5. Bureaucracies need power in order to function in the American political system. They derive that power from a variety of sources, such as external support, expertise, bureaucratic discretion, longevity, and skill and leadership.

6. There are many limits to bureaucratic power. These limits come from the legal and political controls exercised by the presidency, Congress, the courts, and various agencies.

7. In their operation, bureaucracies sometimes develop pathological behavior patterns. They may give excessive attention to the interests of those they serve (clientelism), oppose change (incrementalism), tend to be arbitrary and capricious (arbitrariness), take an overly narrow view of the world (parochialism), and yield to an urge to expand (imperialism).

8. Pathological behaviors stimulate a variety of reform efforts, many of which focus on reorganizations and changes in personnel policies. Ultimately, however, bureaucracies must meet the expectations of the public in accomplishing their jobs. In many instances those expectations are in direct conflict with the standards of businesslike performance.



Net Work

The GovBot search engine *(http://ciir2.cs.umass.edu/GovBot/)* is a good place to begin any exploration of our government's vast data resources.

Do you want to find out more about the federal work force? All the up-to-date data can be found at the web site of the U.S. Office of Personnel Management *(http://www.opm.gov)*. See if you can find the answers to the following:

- What is the average age of the typical federal employee?
- How many federal government employees work in California? How many work in Maine? What does a level GS-13 federal employee do when he or she enters government employment? What if she or he works in San Francisco? In New York?

As another activity, find the web site addresses (URLs) for the following federal and state agencies:

- The U.S. Department of Commerce
- The Internal Revenue Service
- The National Park Service
- The New Jersey Department of Environmental Protection
- The National Aeronautics and Space Administration
- The Office of Management and Budget
- The Texas Rangers (the state police organization, not the baseball team!)

CHAPTER 13

Courts, Judges, and the Law

- The Origins and Types of American Law
- The Structure of the Court Systems
- The Federal and State Court Systems

Lower Courts: District courts and courts of appeals
The Supreme Court: Form and function
Specialized Courts: Courts with special interests
State Court Systems: Limited and general jurisdiction
Interactions Among Court Systems: A complex web

- Recruiting and Removing Judges

Federal Judges: Different appointment procedures
Who Becomes a Federal Judge? A biased system
Removing Judges: Impeachment and its difficulties

- The Supreme Court at Work

Oral Argument: Questions and answers
Conference Work: The crucial decision-making process
Writing and Announcing the Opinion: Concurring and dissenting opinions
Interpreting the Constitution: Judicial review and original intent

- The Implementation of Court Decisions

Compliance by Other Courts: Cooperation is not automatic
Congress and the President: Paths of resistance

- Conclusion: The Courts Are Not What They Seem

MYTH & REALITY

Are judicial decisions completely objective and final?

MYTH & REALITY

Frustrated by the course his life had taken, a young man from Boulder, Colorado, filed suit against his parents. Claiming that they had neglected his physical and psychological needs, the young man asked the court to award him $350,000 for something he termed "malpractice of parenting." Halfway across the country, another man, professing that the world hated him, brought suit for unspecified damages against the Supreme Court and the world.

Although these cases are extreme in their triviality, the parties to them demonstrated a basic American belief: that courts can resolve almost any kind of dispute. In large measure, the uniqueness of the American political system stems from the role played by the courts. No other nation grants so much authority and political power to the judiciary, nor are citizens of other nations quite as willing to entrust their fate to courts as are Americans. Yet for all their faith in courts, most Americans know very little about the legal system. They may have had a brush with the local traffic court or be entertained by Judge Judy. They may even be frequent viewers of cable television's *Court TV*. Nevertheless, when pressed to elaborate on what courts do and why they do it, most people fall back on some vague notions about the law.

The courts are shrouded in symbolism and myth. Pomp and circumstance surround even the lowliest of courts. Only in a courtroom will you find a black-robed individual looking down from a raised platform. No other public official is allowed such trappings. In fact, a mayor or senator decked out in a black robe would seem a pompous fool. Yet when a judge puts on those same robes, no one laughs or even thinks it odd; instead, the robes evoke respect. The same is true of the myths that surround the American court system: If they were attributed to any other political institution, they would seem preposterous.

Perhaps the most widespread of the illusions surrounding the courts is that they are above politics. In contrast to the compromise and partisanship of the political world, the *myth of the nonpolitical courts* represents the judiciary as operating with the certainty that comes from the neutral application of a body of specialized knowledge. Presidents and members of Congress may act out of self-interest; judges simply apply the law. It is the fate of courts to be characterized as the defenders of the rule of law as opposed to the rule of ordinary men and women.

As comforting as this myth may be, it distorts reality. In the pages that follow, you will see that even the act of creating the federal courts was fraught with political conflict. Similarly, not only is the process of selecting judges mired in political controversy, but those chosen are often active participants in politics.

The idea that courts have special powers also gives rise to the *myth of finality*, which assumes that once a court—especially the Supreme Court—has spoken, the decision is automatically implemented. This tendency to view court decisions as an endpoint in the political process makes courts seem more powerful than they actually are. Final authority does not rest with the Supreme Court, nor should it in a representative democracy. Courts cannot compel

Reconsidering the Death Penalty

Although the Supreme Court has generally upheld the imposition of the death penalty, it remains a controversial form of punishment. Recent examples of DNA evidence exonerating persons on death row have led to renewed calls for the abolishment of the ultimate form of punishment. Pictured here is Illinois Governor George Ryan who, after being confronted with evidence that some defendants had been wrongly convicted of capital offenses, ordered a death penalty moratorium in his state.



anyone to comply with their decisions. Their orders become effective only with the aid of others—aid that is not always provided.

We begin our discussion of the role of courts in American society by distinguishing the various sources of law. Then we look at the structure of the court system and the way in which judges are appointed and removed. We conclude the chapter with an examination of the workings of the Supreme Court and the question of compliance.

The Origins and Types of American Law

As you may recall from Chapter 2, on the Constitution, the oldest source of law applied by U.S. courts is *common, or judge-made, law,* which dates from medieval England. A comparatively modern and increasingly important source of law is *statutory law,* which originates from specifically designated lawmaking bodies (for example, Congress and state legislatures).

Civil actions Suits arising out of conflicts between private persons and/or organizations; they typically include disputes over contracts, claims for damages, and divorce cases.

The distinction between civil and criminal actions is also important in understanding the legal process. **Civil actions** involve a conflict between private persons and/or organizations. Typical of these cases are those involving disputes over contracts, claims for damages resulting from a personal injury, and divorce

cases. In a civil case, the person bringing the suit is called the plaintiff, and the person being sued is the defendant.

Criminal law That branch of the law dealing with offenses against the public order and providing for a specified punishment. Most criminal law cases arise in state courts.

Criminal law, on the other hand, applies to offenses against the public order and entails a specified range of punishments. Acts in violation of criminal law are specifically detailed in governmental statutes. The party demanding legal action (the national, state, or other government) is called the prosecution; the person being prosecuted is called the defendant. Most of these cases arise in state courts, although there is a growing body of federal criminal law dealing with such issues as kidnapping, tax evasion, and the sale of narcotics.

The Structure of the Court Systems

When most Americans think about courts, the U.S. Supreme Court immediately comes to mind. As the highest court in the land, the Supreme Court symbolizes the American judiciary. Yet it is only one of more than eighteen thousand American courts, most of which are the creations of the various states. Each state, as well as the Commonwealth of Puerto Rico, has its own independent court system. Because most criminal prosecutions and civil actions are governed by state laws, these are the courts that most affect the average citizen. For example, a motorist accused of driving under the influence of alcohol will be brought before a court in the state in which the violation occurred.

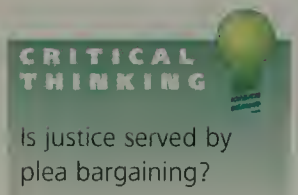
Trial courts Courts at the lowest level of the system. They possess original jurisdiction.

Original jurisdiction The authority to hear a case before any other court does.

Obviously, with fifty-two court systems, there is bound to be a great deal of variability; in fact, no two systems are exactly alike. Nevertheless, two types of courts can be found in all systems.

Trial courts, the lowest level of a court system, are the "courts of first instance," possessing **original jurisdiction** (the power to be the first court to hear a case). These courts take evidence, listen to witnesses, and decide what is true and what is not. Trial courts handle both criminal and civil cases.

Trial court decisions may be made by a single judge (a procedure known as a *bench trial*) or by a jury made up of citizens selected from the community. The Constitution provides for jury trials in all criminal cases and in civil cases where the value contested exceeds $20. Most state constitutions contain similar provisions for jury trials. Nevertheless, jury trials tend to be the exception rather than the rule. The desire for a quick decision encourages many defendants to waive the time-consuming jury selection process in favor of the faster decision by a judge. Parties to particularly complicated civil litigation may also assume that members of a jury will be less capable of following the detailed arguments than a judge. In criminal cases, a high percentage of defendants enter into plea-bargaining agreements, in which the accused, with the consent of the prosecutor, avoids a trial by pleading guilty to a lesser crime or accepting a less severe punishment.



Appellate courts Courts that reconsider the decisions rendered by trial courts, at the request of the losing party seeking to appeal.

In contrast, **appellate courts,** are charged with the responsibility of reconsidering decisions made by trial courts if the losing party requests it and demonstrates grounds for it. The appellate review is designed to ensure that there is no error in judicial procedures or interpretations of the law. Because appellate courts simply review the written record of lower courts, they do not use juries.

The Federal and State Court Systems

On paper, the federal court structure appears to be relatively simple and eminently rational. After all, the system is composed of a single Supreme Court, several appellate and trial courts, and a limited number of specialized trial courts (see Figure 13.1). But behind the judicial system's facade of orderliness is a history of intense political struggle that contradicts the myth of the nonpolitical courts.

Lower Courts

Article III of the Constitution creates only one court, the Supreme Court, giving Congress the power to create such "inferior courts" as it deems necessary. This peculiar approach to court structure was the direct result of the bitter struggle between the Federalists and the Antifederalists at the Constitutional Convention. The Antifederalists, in order to protect the power of the states, wanted a system in which all cases, even those involving the national government, would be heard by the state courts. The Federalists argued for a national court system, which would establish the supremacy of the central government and limit the biases of the local courts.[1] Unable to reach agreement, the delegates finally compromised by creating the Supreme Court and leaving to Congress the responsibility for filling in the details of the system.

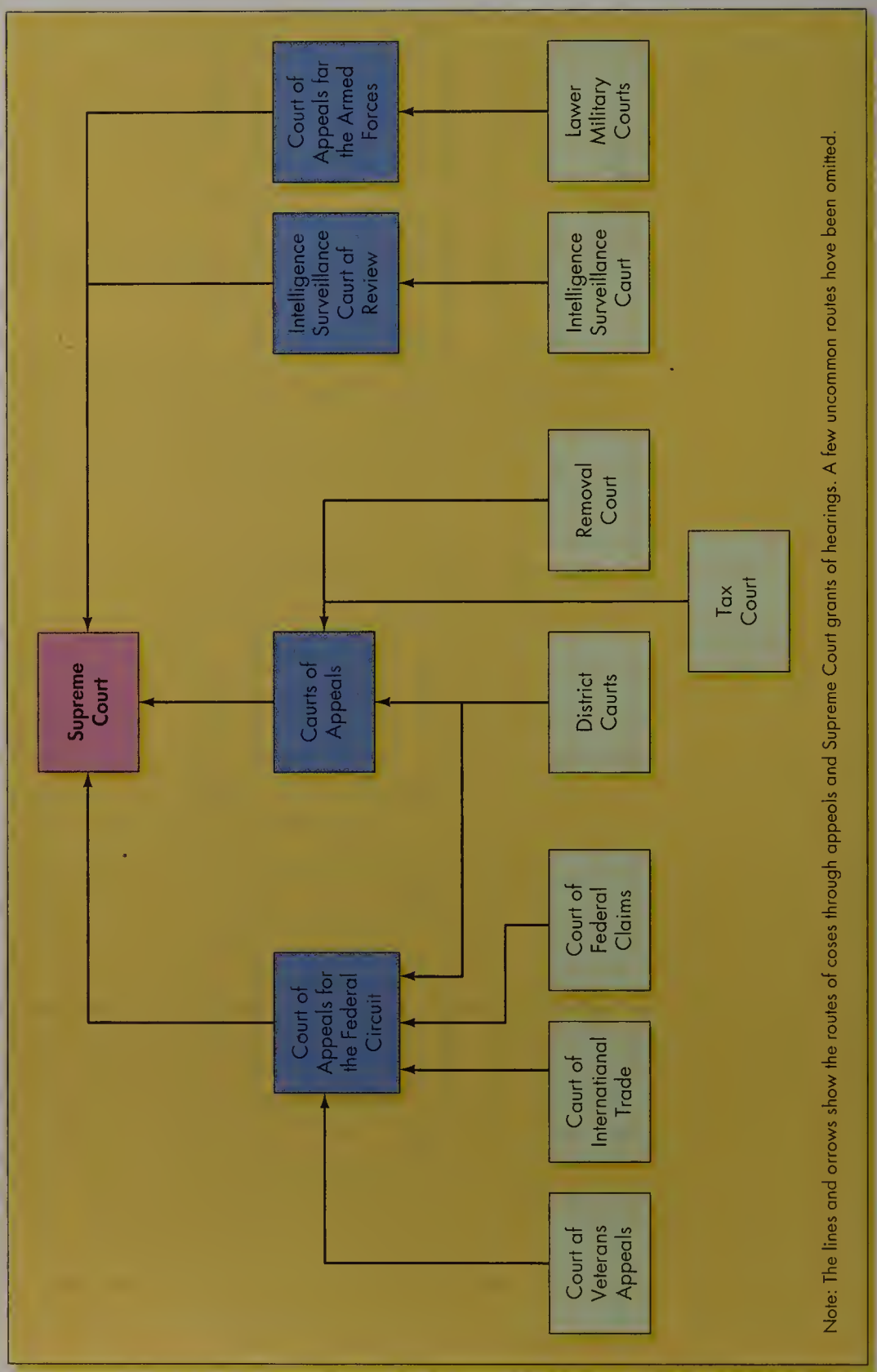
The organization of federal courts remains a divisive political issue. For example, it took twenty years of struggle between conservative white southerners and civil rights groups to split the old fifth circuit court of appeals. (A *circuit* is a judicial territory.) In the 1960s, southerners proposed splitting the circuit, and moving conservative southern judges into the new circuit, creating a Deep South court. Convinced that such restructuring would weaken civil rights enforcement, civil rights groups, principally the National Association for the Advancement of Colored People (NAACP), managed to block the reorganization. In 1980 civil rights groups and liberal members of Congress finally agreed to split off a new eleventh circuit from the old fifth circuit. The NAACP withdrew its opposition only after the appointment of some black judges to these circuit courts—demonstrating that even the apparently technical questions of court structure are matters of sharp political conflict.

FIGURE 13.1

Organization of the Federal Court System

The lines and arrows show the routes of cases through appeals and Supreme Court grants of hearings.

Source: From Lawrence Baum, *American Courts: Process and Policy,* 2nd ed., p. 28. © 1998 by Houghton Mifflin Company.



CRITICAL THINKING

Why is it important that district court boundaries never cross state lines?

U.S. District Courts. As trial courts of general jurisdiction for the federal system, district courts hear trials in all federal criminal and civil cases. The district courts also hear what are known as *diversity cases*: suits between parties from different states when the amount in controversy exceeds $75,000. In addition to their trial duties, the district courts are also responsible for the naturalization of aliens, the approval of passports, and the granting of parole to federal prisoners.

The Judiciary Act of 1789, the first Senate bill introduced in the First Congress, created a national judiciary that included the district courts. Although the creation of these courts resulted from the Federalist impulse to establish a strong national judiciary, the form they took was shaped by the Federalists' need to compromise with the Antifederalists. Thus the Federalist forces attained their goal of a national court system, but the Antifederalists insisted on district boundaries identical with state borders—which remains true to this day. By requiring district court and state boundaries to be the same, the Antifederalists achieved a decentralized structure that was committed to local political values.

Currently, there are ninety-four U.S. district courts distributed among the fifty states, the District of Columbia, and the four territories. Twenty-four states contain more than one district, and the remaining states and territories have one district court each.

District court cases are usually heard by a single judge, who presides over both civil and criminal trials. The district courts have a total of 632 judicial positions, but the number of judges assigned to a district varies from 1 to 28. The federal

Becoming a Citizen

Among the duties assigned to the U.S. District Courts is the responsibility to naturalize qualified aliens. Pictured here is a group of applicants taking the final step toward becoming naturalized citizens.



territory of Guam, for example, constitutes a single judicial district, staffed by one judge. Among the states, Idaho, North Dakota, and Vermont each contain one district with two judges. In contrast, the Southern District of New York, which includes Manhattan and the Bronx, has twenty-eight judges assigned to it.

To most Americans, the district courts may seem to be the least important of the federal courts. Yet district courts hear more than two hundred thousand cases each year, and fewer than 10 percent of them are appealed to a higher court. Of those that are appealed, only a small fraction are reversed. For most litigants, the district court decision is the final decision.

Circuit courts Federal courts of appeals that rank above the district courts and serve as the major appellate courts for the federal system. They review all cases, both civil and criminal, and the decisions of independent regulatory agencies and departments.

Courts of Appeals. Courts of appeals, or **circuit courts,** as they are sometimes called, serve as the major appellate courts for the federal system. They review all cases—civil and criminal—appealed from the district courts. Moreover, on occasion these courts review decisions of the independent regulatory agencies and departments. For example, decisions of the Federal Communications Commission involving the renewal of radio and television licenses can be appealed only to the District of Columbia Circuit.

There are twelve U.S. courts of appeals, one for the District of Columbia and eleven others covering regional groupings of states (see Figure 13.2). Although the circuits include more than one state, no state is divided among circuits. A thirteenth court of appeals, the U.S. Court of Appeals for the Federal Circuit, is an appellate court charged with hearing patent and trademark cases.

The twelve courts of appeals of general jurisdiction have 179 authorized judgeships. But, as in the district courts, these judges are unevenly distributed among the circuits. Individual circuits have anywhere from 6 to 28 judges assigned to them. The number is determined by Congress and is supposed to reflect the workload of the circuit. Ordinarily, the courts of appeals hear cases in panels of three judges, and the membership of these panels varies from case to case.

The Supreme Court

The Constitution is remarkably vague even with regard to the Supreme Court. It is worth comparing Article I with Article III and noticing how detailed Article I is concerning the makeup and duties of Congress, and how lacking in such details Article III is about the Court.

How many justices serve on the Supreme Court? The answer is currently nine, but you will not discover that from reading the Constitution. The Constitution does not designate a size for the Court; that is left up to Congress. Since 1869, the Court has been staffed by a chief justice and eight associate justices. Until 1869, however, Congress made frequent changes in the size of the Court. Often these changes were thinly disguised efforts to serve partisan political purposes. During the Civil War, for instance, Congress created a tenth seat on the Supreme Court, assuring President Abraham Lincoln a solid majority on the Court.

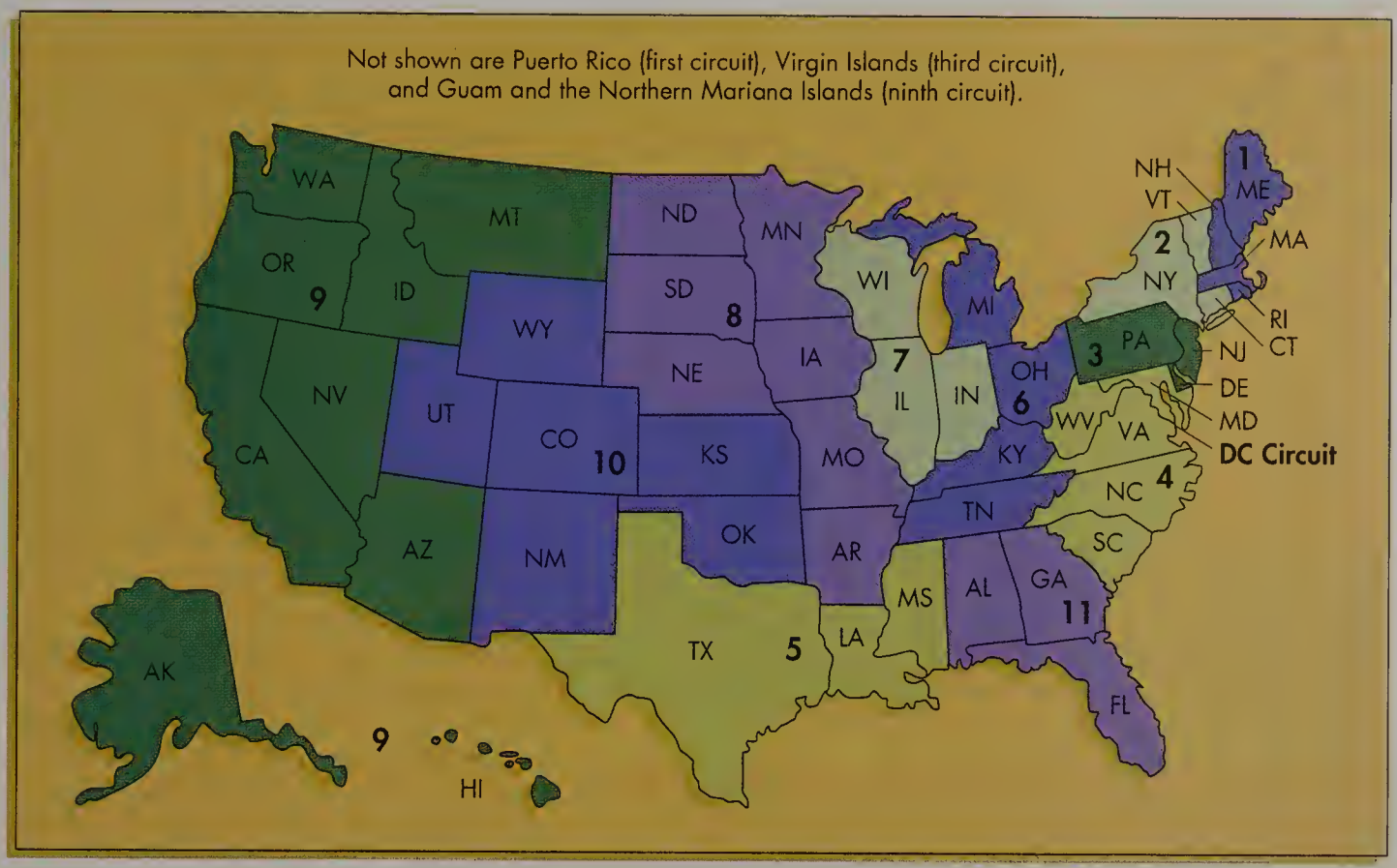


FIGURE 13.2
U.S. Circuit Courts of Appeals

At the base of the federal court system are ninety-four district (or trial) courts. Each state has at least one district court, and larger states have more. Judgments from district courts can be appealed to one of twelve circuit courts of appeals. Only a fraction of the cases decided in district courts ever come before the appeals courts, and only a tiny fraction of these are reviewed by the Supreme Court.

According to the Constitution, the Supreme Court has both original and appellate jurisdiction. Original jurisdiction, as stated earlier, means that a court is empowered to make the first decision in a particular kind of dispute; it is the court of first instance. Article III limits the Supreme Court's original jurisdiction to cases involving foreign ambassadors and those in which a state is a party. Suits under original jurisdiction account for a very small portion of the Supreme Court's workload. In 1998, for instance, of the 7,692 cases that the Supreme Court was asked to decide, only seven of these were presented under original jurisdiction.

The chief labor of the Supreme Court is appellate. For much of the nation's history, the Court was required by Congress to hear all cases that came to it. Complaints by the justices that the workload was unmanageable finally led Congress to pass the Judiciary Act of 1925. Under the provisions of this act, the Court has tremendous latitude in selecting the cases it wants to hear.

Writ of certiorari A request that the Supreme Court order a lower court to send up the record of a case.

Of the more than seven thousand cases brought annually to the Supreme Court, approximately 90 percent come by way of a request for a **writ of certiorari**—a request that the Supreme Court order the lower court to send up the record of the case. Cases are accepted for review by means of the *rule of four*, that is, four justices must vote to consider the case. More than 95 percent of requests for writs of certiorari are denied, normally without explanation. The Court simply notes that certiorari is denied and that the decision of the lower court stands. Cases can also come to the Court by **appeal,** which means that the litigants have some right under the law to have their cases reviewed. In practice, appeals are treated in the same discretionary way as requests for certiorari.

Appeal A route by which cases can reach the Supreme Court. In such cases, litigants have some right under the law to have their cases reviewed.

Because the Court receives many more petitions each year than it can possibly process, the freedom to accept only a limited number of cases is essential to its effective operation. But there are also political advantages to the screening process. By carefully selecting cases for review, the justices can and do advance their policy preferences. Moreover, the ability to deny review without explanation can be used to avoid particularly controversial political issues. Thus the Supreme Court avoided ruling on the constitutionality of the undeclared war in Vietnam by refusing, without explanation, to grant certiorari to cases raising the issue.

CRITICAL THINKING

How can the refusal to hear cases advance policy preferences?

Specialized Courts

In addition to the federal courts that we have discussed, Congress has also created a few specialized courts. One of them is the U.S. Court of Federal Claims, created to litigate disputes involving government contracts. Other special courts include the U.S. Court of Military Appeals, the U.S. Court of International Trade, Court of Veterans Appeals, and the U.S. Tax Court. Staffed by judges with expertise in a particular area, these courts reduce the workload of the general courts.

State Court Systems

Each state has at least one appellate court that serves as its highest tribunal. These courts are not always identifiable by title, however. For example, in the state of New York, the highest court is called the court of appeals, and the trial courts are designated as the supreme courts. Whatever the name, nearly every state has one court that reviews the decisions of all other courts. (Both Texas and Oklahoma have two high courts—one for civil litigation and one that handles only criminal appeals.) Slightly more than half the states also make use of an intermediate appellate court to hear appeals from trial court decisions. Such courts permit the parties to appeal without overburdening the highest court.

Limited jurisdiction The power of certain trial courts that are allowed to hear only a narrowly defined class of cases.

The most numerous state courts, the trial courts, are divided into two types: those with limited jurisdiction and those with general jurisdiction. Trial courts of **limited jurisdiction** are empowered to hear only a narrowly defined class of cases. These specialized courts often process a large number of routine cases involving

MYTHS IN POPULAR CULTURE





O.J., *Ally McBeal*, and Criminal Justice

Throughout the spring of 1995, millions of Americans eagerly watched their televisions as the drama of the O. J. Simpson trial unfolded. From the police chase involving Simpson's white Ford Bronco to the pretrial hearing, and finally to the trial itself, television provided live coverage. Like that of a sporting event, the coverage was generously supplemented with commentary—in this case, from famous criminal lawyers—analyzing and critiquing every move of the contending attorneys.

Although some thought that the trial's publicity played to a morbid curiosity on the part of Americans, most media pundits hailed the reporting as a great civics lesson. The recounting of each phase of the trial was supposedly teaching us about the workings of criminal trials and the constitutional safeguards that accompany them. Americans could, we were assured, learn how real trials differed from the courtroom dramas that have long been a staple of television.

Obviously, the Simpson trial was different from television drama. This was neither *Ally McBeal* nor *The Practice*. The trial was not wrapped up in an hour, and no witness conveniently broke down on the stand and confessed to the crime. But if the Simpson trial was a far cry from the way Hollywood usually scripts a trial, it was also a far cry from the normal criminal trial. Indeed, most criminal defendants do not even go to trial; instead, in more than 90 percent of the cases, they plead guilty. Often the defendants participate in a criminal-justice system labeled by its critics as "slaughterhouse justice." As one public defender described disposing of seventeen cases, "I met 'em, pled 'em, and closed 'em—all in the same day."

Even when a trial does take place, it seldom resembles the Simpson trial because few criminal defendants have the resources to hire a phalanx of highly skilled attorneys and investigators. Many defendants are indigent and thus are unable to afford even basic representation. These defendants must depend on court-appointed counsel. Although these lawyers may be highly skilled, they seldom have the investigative resources available to the state or to a wealthy defendant. In New Orleans, for instance, the public defenders' office has three investigators to handle more than seven thousand cases a year.

Moreover, the quality of appointed counsel varies tremendously. Most courts provide legal services to indigents by appointing private counsel to serve the defendant—generally only the largest communities have a public defender service. Because fees paid to court-appointed counsel are commonly less than they receive for other services, experienced lawyers are reluctant to accept such assignments. Thus court-appointed counsel are often inexperienced lawyers who have little interest in criminal law but need even the small fees that the court pays. In Philadelphia, for instance, one study found that the appointed counsel were so bad that "even officials in charge of the system say they wouldn't want to be represented in traffic court by some of the people appointed to defend poor people accused of murder." Even more illustrative may be the trial of a woman in Alabama who was accused of murdering her abusive husband. The trial was delayed by a day when the judge found her appointed counsel in contempt for showing up drunk. The following day, the attorney and his client were both led into the courtroom—from jail. The trial proceeded, and the defendant was found guilty and sentenced to death. Never did the court-appointed lawyer produce hospital records documenting the injuries suffered by the woman and her children.

In many ways it may well be that, by covering the Simpson trial, television has substituted one mythic view of criminal justice for another. The Simpson trial was real, but not representative.

Source. Quotes from Stephen B. Bright, "Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer," 103, *The Yale Law Review* (1994), 1835–1883.

minor issues. Among the most common courts in this category are traffic courts and small-claims courts.

General jurisdiction
The power of trial courts to hear cases on a broad class of issues, ordinarily including all civil cases involving nontrivial monetary value and all cases involving serious criminal matters.

Trial courts of **general jurisdiction** have authority over a much broader class of issues. Ordinarily, such courts hear all civil cases involving nontrivial monetary value and all cases involving serious criminal matters. Although the courts of general jurisdiction are not as specialized as the courts of limited jurisdiction, it is not unusual to find courts of general jurisdiction divided into criminal and civil courts, especially in metropolitan areas with heavy caseloads.

Interactions Among Court Systems

The existence of so many court systems obviously complicates the interactions among them. Often the litigants (parties involved in a suit) can choose among several different courts. Indeed, it is common for the plaintiff (the party bringing suit) to shop around for a court, hoping to find one favorable to his or her side.

This complexity is heightened by the fact that both state and national courts may have jurisdiction over the same issues—a situation known as *concurrent jurisdiction.* For example, Congress has granted to the federal district courts the right to hear the so-called diversity cases—cases involving citizens of different states contesting a sum greater than $75,000. In doing so, however, Congress did not deny the state courts the right to hear such cases; it merely established an additional forum for resolving them.[2]

Although the complex network of multiple court systems gives plaintiffs the opportunity to shop around for a favorable court before bringing an action, once the case has been tried, appeals must be made within the same court system. Occasionally, decisions of a state's highest court are successfully appealed to the U.S. Supreme Court, but this can occur only when the state's highest court has rendered a decision interpreting provisions of the U.S. Constitution, a treaty, or a federal law. Decisions of a court in one state may never be appealed to a court in another state, nor is it possible to appeal a federal court decision to a state court.

Recruiting and Removing Judges

In contrast to nations such as Italy, the United States does not have a career judiciary; there is no special training required for judges. In fact, the U.S.

Constitution does not even require legal training as a qualification for service on the Supreme Court. All 108 justices who have served on the Court have been lawyers, but it was not until 1957 that all members of the Court had earned law degrees.

There is an old adage in American politics that a judge is a lawyer who knew a senator or governor. Though something of an overstatement, the saying indicates that beyond the formal requirements of constitutions and statutes lies a selection process that is highly political. The myth of the nonpolitical courts suggests that judicial selections are or should be based solely on merit. The reality is that the choices are always political.

Federal Judges

According to Article II of the Constitution, the president shall nominate and, with the "advice and consent of the Senate," appoint justices of the Supreme Court. The president proposes a candidate to the Senate; if a majority of the Senate approves, the nominee takes office. This same formal method is used to appoint judges to the courts of appeals and district courts. But the constitutional requirements do not describe the political complexity of the selection process. Furthermore, informal methods of selection have evolved alongside the formal process.

Appointments to the District Courts. The president has the power to make nominations to the district courts. Most administrations establish guidelines

Federal and State Governments Versus Microsoft

Here, Microsoft founder and chairman Bill Gates testifies before the Senate Judiciary Committee during government hearings on his company's alleged monopolistic business practices. In November 1999, Microsoft lost a lengthy lawsuit brought against the company by the U.S. Department of Justice and a number of states for violation of antitrust laws.



detailing the qualities the president expects in a nominee and then leave the search for candidates to the U.S. Department of Justice. In Ronald Reagan's administration, for instance, the Justice Department's Office of Legal Policy was chiefly responsible for nominations to the federal district courts. To ensure that the nominees shared the president's political philosophy, attorneys in the Office of Legal Policy reportedly subjected judicial candidates to extensive interviews, said to last six or more hours. The most controversial aspect of the Reagan administration's screening was the reported use of abortion as a litmus test. Throughout Reagan's term, complaints surfaced that Justice Department officials routinely questioned prospective nominees on their views on abortion and rejected those who did not conform to the administration's position. Though Reagan was certainly not the first president to consider the ideology of his nominees, his administration represents "the most systematic, most coordinated effort at the use of appointment power to maximize the president's agenda and to maximize the president's influence on the appointment process."[3]

CRITICAL THINKING

Should presidents inquire into the political beliefs of prospective judges?

In nominating candidates for the district courts, however, the executive branch must always be mindful of the power of individual senators. Under the terms of the unwritten rule of senatorial courtesy, if a senator of the president's party from a nominee's state opposes the nomination of any candidate, the Senate as a whole will reject it. In recent years, senatorial courtesy has been exercised at the committee stage by use of the "blue slip." When it receives a nomination to a federal court, the Senate Judiciary Committee notifies the senators by means of a blue slip. If a senator of the president's party from the nominee's state fails to return the blue slip, it kills the appointment. The committee will simply refuse to take any action until the nomination is withdrawn.

Rather than provoke confrontations with the Senate, presidents have as a rule accepted advice from the relevant senators. Often this translates into formal nomination by the president but informal nomination by a senator. In fact, the prominence of senatorial courtesy led one former assistant attorney general to remark, "The Constitution is backwards. Article II, Section 2, should read: 'the Senators shall nominate, and by and with the consent of the President, shall appoint.'"[4]

Appointments to the Courts of Appeals. The president and the Justice Department have a freer hand in making appointments to the courts of appeals than they do in the case of district courts. Because the circuits contain more than one state, no senator can unambiguously claim senatorial courtesy. However, because it is generally assumed that each state in a circuit should have at least one judge on that circuit's appellate bench, the president is constrained by having to maintain the proper balance of state representation.

Appointments to the Supreme Court. The Supreme Court is a national institution, with no special ties to states or regions. Thus the president need not worry about individual senators exercising senatorial courtesy, although

Facing the Senate

Appointment to the Supreme Court requires nomination by the president and confirmation by the Senate. Here Ruth Bader Ginsburg appears before the Senate Judiciary Committee for confirmation hearings. Ginsburg was easily confirmed by the Senate.



senators from the nominee's state are asked to serve as sponsors. The Senate is far from irrelevant to the nomination process, however, and it has considered itself free to reject candidates for a variety of reasons. Reagan's nomination of Judge Robert Bork, for instance, failed in the Senate because of widespread opposition to his restrictive views on the right to privacy and equal rights for women.

CRITICAL THINKING

What criteria should the Senate use in confirming judicial nominees?

In the nineteenth century, the Senate was more likely to disapprove a presidential nomination on purely partisan grounds than it is today. Before the Bork nomination, the two most recent nominations to fail in the Senate, those of Judges Clement Haynsworth and G. Harrold Carswell, were opposed by Senate liberals for ideological reasons, but both candidates had other serious disadvantages. Haynsworth came under attack for having purchased stock in a company that had been a party in a case before him; he bought the stock after the decision had been made, but before it was announced. Carswell was criticized for lacking the professional qualifications expected of a Supreme Court justice. His fate was probably sealed when one of his defenders, Republican Senator Roman Hruska from Nebraska, argued that "there are a lot of mediocre judges and

people and lawyers. They are entitled to a little representation, aren't they, and a little chance?"[5]

None of these battles, however, not even the failed Bork nomination, matched the furor over President George Bush's 1991 nomination of Judge Clarence Thomas. Nominated by the president to replace Thurgood Marshall, the Court's only African American justice up to that time, Thomas initially appeared assured of Senate confirmation. Like Marshall, he had overcome segregation and poverty. But from the beginning Thomas's conservatism, particularly on issues of affirmative action, troubled Senate liberals and leaders of the major civil rights organizations.

After five days of hearings, during which Thomas recanted many of his previous writings and refused to discuss his opinions on abortion, the Senate seemed set to confirm his nomination. As the Senate was about to vote, however, allegations of sexual harassment were leaked to the press. Although the allegations made by Professor Anita Hill, who had formerly worked for Thomas, had been presented to the committee, they had not been part of the public record. Embarrassed by the leak, the Senate postponed the floor vote on the nomination, and the Senate Judiciary Committee reconvened for an extraordinary set of weekend hearings, covered live on television. The Judiciary Committee heard testimony from Hill, Thomas, and others concerning the nominee's behavior. Following this second round of hearings, the committee sent the nomination to the Senate floor without a recommendation—the committee had divided 7 to 7 over whether Thomas should be confirmed. Eventually the Senate confirmed him by the closest vote accorded any successful nominee in the twentieth century, but the battle polarized the nation and left many senators questioning the confirmation process. Several senators, including the chair of the Judiciary

TABLE 13.1
The Rehnquist Court

Justice	Year Born	Year Appointed	Appointing President	Political Party
Rehnquist, William	1924	1971	Nixon	Rep.
		1986*	Reagan	
Stevens, John	1920	1975	Ford	Rep.
O'Connor, Sandra	1930	1981	Reagan	Rep.
Scalia, Antonin	1936	1986	Reagan	Rep.
Kennedy, Anthony	1936	1988	Reagan	Rep.
Souter, David	1939	1990	Bush	Rep.
Thomas, Clarence	1948	1991	Bush	Rep.
Ginsburg, Ruth Bader	1933	1993	Clinton	Dem.
Breyer, Stephen G.	1938	1994	Clinton	Dem.

*Appointed chief justice.

Committee, vowed to seek changes in the Senate procedures, but so far no changes have been made.

Because justices of the Supreme Court are appointed for life and occupy such a prominent position in the American system of government, presidents are quite careful to choose justices whose ideological views seem to be in harmony with theirs. If fate provides enough vacancies, a president's appointments can reshape the judiciary to reflect his views, perpetuating the president's philosophical positions long after the administration has left office (see Table 13.1).[6]

Of course, presidents are not always successful in predicting what a candidate will do once she or he is in office. Perhaps the most famous example of a president who was frustrated by his own appointment is Theodore Roosevelt, who nominated Oliver Wendell Holmes. Before forwarding the Holmes nomination to the Senate, Roosevelt had assured himself that the candidate shared his views on the antitrust statutes. When Holmes immediately voted against the president's view in an antitrust case, Roosevelt quipped that he could "make a judge with a stronger backbone out of a banana."[7] Similarly, President Dwight D. Eisenhower came to regret his appointment of Earl Warren as chief justice. Eisenhower had made the appointment expecting Warren to express the president's own middle-of-the-road political views. Instead, the Warren Court (1953–1969) became known as the most liberal Supreme Court in U.S. history. Eisenhower referred to the appointment as "the biggest damned-fool mistake I ever made."[8]

Nominations to the Supreme Court also give presidents a chance to recognize important constituent groups, especially social groups that have been unrepresented. President Lyndon B. Johnson broke the Supreme Court's color barrier by appointing Thurgood Marshall, the first black justice. President Reagan appointed Sandra Day O'Connor, the first woman to serve on the Court. Obviously, the appointment of a woman or minority group member to the Court is unlikely to have a substantive impact on decisions, but representation for a group that has traditionally been excluded from the process has great symbolic value.

Who Becomes a Federal Judge?

No recruitment system is ever neutral. Any system will favor certain skills and characteristics and downplay others. The process of selecting Supreme Court justices favors individuals from socially advantaged families. As an observer has noted, "The typical Supreme Court Justice has generally been white, Protestant (with a penchant for a high social status denomination), usually of ethnic stock originating in the British Isles, and born in comfortable circumstances in an urban or small-town environment."[9] What is more, almost two-thirds of the justices have come from politically active families. Finally, those appointed to the Court have by and large been politically active themselves, with the vast majority having previously held political office.

When we examine the judiciary in the lower federal courts, we see a similar, although less pronounced, pattern of upper- and middle-class appointees. Compared with Supreme Court justices, judges on the courts of appeals, for

instance, are slightly less likely to come from politically active families and more likely to have been educated at less prestigious law schools. These courts also show greater sexual and racial diversity than does the High Court. This diversity peaked under President Jimmy Carter, who appointed more women and minorities to the federal courts than any other president.

Because appointments are for life, the federal courts are an especially rich source of political patronage, and presidents are under some pressure to reward the party faithful with such appointments. Although presidents occasionally nominate a member of the opposition party, most have selected at least 90 percent of their appointees from their own party. Staffing the courts with partisans ensures a foothold in the government for a party, even when the party is out of favor with the voters. Aside from patronage questions, relying on members of their own party allows presidents to choose judges who are more likely to share their political outlook. Thus the bias toward fellow party members serves two goals, both of which clearly contradict the myth of nonpolitical courts.

Removing Judges

CRITICAL THINKING

Should the Constitution be amended to provide set terms of office for federal judges?

In the early days of the republic, one of the most important problems facing the federal courts was attracting and retaining judges. As strange as it may seem, President George Washington had problems filling positions on the Supreme Court. For example, John Rutledge, one of Washington's first appointees, resigned before the Court ever met to become the chief justice of the South Carolina supreme court—a position he apparently found more attractive. As the prestige of the federal courts increased, recruitment problems diminished, although attracting and retaining lower-court judges is sometimes difficult because the salaries are low compared with what many potential appointees could earn in private law practice.

Because the prestige and power of a judgeship are understandably hard to give up, it is occasionally necessary to remove an ill or incompetent judge who refuses to retire. This problem is particularly thorny in the federal courts because the only constitutional means for removing federal judges is the impeachment process, which requires evidence of "Treason, Bribery, or other high Crimes and Misdemeanors."

Over the years there have been few impeachment trials. In 1986, however, Congress, in its first such trial in fifty years, did impeach and convict U.S. District Court Judge Harry E. Claiborne of Nevada. Claiborne had previously been convicted of evading the payment of more than $90,000 in income taxes. At the time of his impeachment trial, he was serving a two-year sentence in federal prison but continuing to draw his salary as a federal judge. In 1989 Congress impeached and convicted two more district court judges. Judge Walter Nixon of Mississippi was removed from the bench on the grounds that he had committed perjury. At the time of his Senate conviction, he was serving a five-year prison sentence for knowingly making false statements to a grand jury. More controversial was the impeachment and conviction of Judge Alcee L. Hastings of Florida. Hastings was

CLOSER TO HOME



Selecting State Court Judges

Although all major courts in the federal system are staffed by judges appointed by the president, with the advice and consent of the Senate, the fifty states use a variety of selection systems. Indeed, many states have established different selection methods for different levels of courts. Nevertheless, five methods dominate.

- *Gubernatorial Appointment.* This holdover from the colonial experience allows the governor to make the appointment, but in virtually all instances such appointments must have legislative confirmation—usually by the state senate. Confined largely to northeastern states, this system attempts to ensure that the judiciary is independent of popular sentiment or political pressure.
- *Legislative Election.* Three states—Rhode Island, South Carolina, and Virginia—authorize the legislature to elect judges. In Rhode Island, only supreme court justices are elected by the legislature; all other judges are appointed by the governor with the consent of the senate. Like the gubernatorial system, legislative election stresses a politically independent judiciary.
- *Partisan Election.* In this system, judicial candidates run on a partisan ballot after winning nomination, usually by way of a partisan primary. A product of the Jacksonian era's emphasis on democratic accountability, partisan elections are intended to ensure that judges are not insulated from popular opinion. Partisan election systems are found mostly in southern and lower midwestern states—states that entered the union during the Jacksonian era.
- *Nonpartisan Elections.* When states use this system, candidates' names appear on the ballot without party labels attached. This method of selection aims to create a judiciary that is responsive to the people. A product of the Populist and Progressive movements' reaction to partisan abuses of power, the nonpartisan election system is mostly found in the upper midwestern and western states.
- *Merit Selection.* Also known as the Missouri Plan for the state that first adopted it, merit selection attempts to blend independence and accountability. There are several nuances, but in general the following procedure applies: A nominating commission composed of three lawyers selected by a state bar association, three nonlawyers selected by the governor, and an incumbent judge submit a short list of candidates (usually three) to the governor. The governor makes the appointment from the list. After a brief term of service, the new judge faces the electorate in a retention election. There is no opponent; the electorate simply decides whether or not to retain the judge. If the electorate prefers not to retain the judge, the process starts over again. Since 1940, when Missouri adopted the system, most states that have altered their selection system have adopted some version of merit selection.

Does it matter which system a state adopts? Most political scientists who have looked at judicial recruitment have found no substantial differences in the personal characteristics of judges that can be attributed to the selection method. Merit systems tend to produce slightly higher proportions of Protestant judges than other selection systems, and women and minorities are somewhat favored by gubernatorial systems. Even the length of service varies little. Judges in partisan election states have slightly shorter careers than those in states using gubernatorial selection, but again the differences are small.

Sources: Lawrence Baum, *American Courts: Process and Policy*, 2nd ed. (Boston: Houghton Mifflin, 1990); Henry R. Glick and Craig F. Emmert, "Selection Systems and Judicial Characteristics: The Recruitment of State Supreme Court Justices," *Judicature*, 70 (December–January 1987), 228–235; and Robert L. Dudley, "Turnover and Tenure on State High Courts: Does Method of Selection Make a Difference?" *The Justice System Journal*, 19 (1, 1997), 1–16.

removed for accepting a bribe in a criminal case. Unlike Claiborne and Nixon, Hastings had been acquitted of related charges in a criminal trial, but the Senate concluded that he had lied and presented false evidence at the criminal trial. These two impeachment trials in a single year prompted several members of Congress to seek alternatives to the time-consuming process. Suggested constitutional amendments to provide for an easy removal procedure were introduced in 1990, but no action has been taken on them.

Even if impeachment were easier, it would probably not be deemed appropriate for judges who suffer from illness or senility. A case in point is that of Utah District Court Judge Willis Ritter. Ritter first drew national attention when he ordered court officials to arrest noisy plumbers who were making repairs near his courtroom.[10] He also engaged in such eccentric behavior as hissing throughout an attorney's presentation to the court. But although this behavior is clearly odd, it does not seem to fit the definition of an impeachable offense—"Treason, Bribery, or other high Crimes and Misdemeanors."

Lacking an effective means of removing judges, Congress has turned to providing pension programs as an incentive for them to step down. Under a 1954 act of Congress, a judge can opt for the status of senior judge. Senior judges receive a pension equal to full pay and may participate, where needed, in as many cases as they choose. This option allows a judge to enjoy a reduced workload without completely retiring. Senior judges have become essential to the operation of many of the more overworked lower federal courts. Senior judges typically handle about 20 percent of the appellate and district court cases.

Because judges do not have to accept senior status, Congress has also provided a mechanism for denying case assignments to sitting judges on the lower federal courts.[11] The judge retains the post and the salary but receives no work.

The Supreme Court at Work

The Supreme Court term begins the first Monday in October and runs through June or into early July, depending on the workload. Court terms are designated by the year they begin, even though very few decisions will actually be handed down in October, November, or December of that year. Throughout the term, the Court alternates between two weeks of open court, called sessions, and two weeks of recess, the time when the justices read petitions and write opinions.

Oral Argument

CRITICAL THINKING

Is the practice of delivering oral arguments before the Court antiquated?

During the weeks that the Court is in session, the justices meet Monday through Wednesday to hear oral arguments. These sessions begin at 10 A.M. and last until 3 P.M., with a one-hour break for lunch. Ordinary cases are allotted one hour for arguments, and the time is evenly divided between the parties. If the case is especially important or involves multiple parties raising a variety of issues, the Court may permit longer presentations.

The attorneys presenting oral arguments are reminded of their time limitations by two lights on the lectern. When the white light appears, they know that they have five minutes left. The flash of the red light signals that their time is up, and they must cease speaking unless the chief justice grants an extension. Most often the parties are held strictly to their allotted time. Chief Justice Charles E. Hughes (1930–1941) was so rigid in enforcing the time limit that he is said to have stopped an attorney in the middle of the word *if*.

Briefs Documents submitted to a court by attorneys that contain a summary of the issues, the laws applying to the case, and arguments supporting counsel's position.

Because all parties have prepared written **briefs** (documents containing a summary of the issues, the laws applying to the case, and arguments supporting counsel's position), the Court discourages attorneys from reading prepared statements. Indeed, the Court's rules state that "the Court looks with disfavor on any oral argument that is read from a prepared text." Generally, the justices expect the attorneys to discuss the case, not to deliver a lecture. Often the attorneys spend their allotted time answering questions posed by the justices, and the justices often use these questions as a means of debating with one another. On one occasion, as Justice Felix Frankfurter repeatedly questioned a nervous attorney, Justice William O. Douglas repeatedly responded with answers

The Supreme Court, 2000 Term

The Supreme Court consists of a chief justice and eight associate justices. Seated from left, Antonin Scalia, John Paul Stevens, William H. Rehnquist (Chief Justice), Sandra Day O'Connor, and Anthony Kennedy. Standing from left, Ruth Bader Ginsburg, David H. Souter, Clarence Thomas, and Stephen G. Breyer.



helpful to the attorney. Finally, a frustrated Frankfurter, directing his remarks to the attorney, said, "I thought you were arguing this case." The attorney responded, "I am, but I can use all the help I can get."[12]

In addition to the arguments of the lawyers representing the parties to the case, the Court may also consider the positions taken by interested third parties. Any individual or organization, with the consent of the parties involved in the case or by Court permission, may submit written arguments known as **amicus curiae** (friend of the court) briefs. Occasionally, amicus participation may even include the offering of oral arguments. For instance, in the 1989 abortion case of *Webster* v. *Reproductive Health Services,* seventy-eight amicus briefs were filed, and the Court allowed the federal government, acting as amicus, ten minutes of oral argument.[13] Amicus participation has become an important means of interest-group lobbying before the courts.

Amicus curiae Written briefs submitted to the Supreme Court by third-party individuals or organizations that want their opinions to be considered in a case. The term is Latin for "friend of the court."

Conference Work

Though oral argument may be dramatic, the crucial work of the Court is done in conference. When the Court is in session, the justices gather in the conference room twice a week to discuss and decide cases. No one else is admitted—not even secretaries or law clerks to help the justices. If a justice needs anything from outside the room, the junior justice (the least senior in terms of service, not the youngest) must go to the door and summon a messenger. In the past, the junior justice was even responsible for pouring the coffee, a practice rumored to have ended with the appointment of Justice Sandra Day O'Connor.

Generally, the justices first decide which petitions should be accepted. Before the conference, the chief justice, with the aid of law clerks, prepares and circulates to the other justices a "discuss" list: a list of cases that the chief justice thinks worthy of discussion. Any case that is not on the list will be automatically denied review unless another justice requests that it be added to the list. Apparently, as many as 70 percent of the requests for review are denied without any discussion.[14]

Cases that make the list are not automatically accepted for review, however. Instead, each case is considered and voted on by the justices. Only those cases that receive four votes (the rule of four) are accepted and scheduled for further action, and the number of such cases is usually quite small. In recent years the Court has accepted only about 90 cases a term for review.

After deciding which cases to accept for review, the Court moves on to the cases being argued that week. The chief justice begins the discussion of each case by outlining and commenting on the main issues. Then each justice, in order of seniority, comments on the case. If the votes of the justices are not clear from the discussion, the chief justice calls for a formal vote. Most questions, however, require no vote, since the justices' positions will be clear from their initial comments. These conference votes are only tentative votes, however. As Justice John Harlan explained, "The books on voting are never closed until the decision actually comes down."[15]

CRITICAL THINKING

Why is the power to appoint the opinion writer important?

After the vote, the chief justice, if in the majority, assigns the writing of the opinion. If the chief justice is not in the majority, then the majority's most senior justice makes the assignment. The assignment of an opinion writer is important because it will determine the grounds for the Court's decision and perhaps even the size of the majority, since the conference vote was tentative. The justice who assigns the writing of the opinion may decide to write the opinion himself or herself, or may give the task to the member of the majority whose views are closest to his or her views. As rumor has it, when Warren Burger was chief justice, he frequently let his turn in the discussion of important cases pass so that he could remain free to join the majority at the end and therefore pick the opinion writer. This practice reportedly became so common that Justice Potter Stewart is said to have drawn a tombstone for Burger with the words, "I'll Pass for the Moment."[16]

Writing and Announcing the Opinion

Once the writing of the opinion has been assigned, the justice given this task begins work on a draft that expresses his or her own ideas and also takes into account opinions expressed by others in the conference. At the same time, other justices may be drafting separate **concurring opinions** (opinions that agree with the conclusion but not with the reasoning of the majority) or **dissenting opinions** (opinions that disagree with the majority conclusion).

Concurring opinions
Opinions written by Supreme Court justices that agree with the conclusion but not with the reasoning of the majority opinion.

Dissenting opinions
Legal opinions written by Supreme Court justices that disagree with the majority conclusion.

As the drafts are completed, they are circulated so that all justices can see them and have an opportunity to comment on them. As justices suggest changes in wording and reasoning, negotiations begin. The justice who has drafted the majority opinion, as well as any justices working on any concurring or dissenting opinions, may have to make changes in order to satisfy the others. Sometimes conflicting views among the justices make this process extremely difficult and time consuming. More important, the need to compromise may produce vague decisions that offer little guidance to lower courts. For instance, many Court observers have attributed the extraordinarily vague command of *Brown* v. *Board of Education II* (1955) to desegregate with "all deliberate speed" to the chief justice's desire for a unanimous decision.[17]

Occasionally, the justice assigned to write the majority opinion will change positions and become a dissenter, or vice versa. Justice William Brennan described the process when he noted: "I have had to convert more than one of my proposed majority opinions into a dissent before the final opinion was announced. I have also, however, had the more satisfying experience of rewriting a dissent as a majority opinion of the Court."[18]

The opinion-writing stage does not end until all the justices have decided which opinion to join. Once they do so, the Court announces the opinion. Throughout much of the Court's history, the justices have read their opinions—majority, concurring, and dissenting—publicly. Currently, the opinion writers read only short statements describing the issues and the disposition.

Interpreting the Constitution

Chief Justice Hughes quipped, "We are under a Constitution, but the Constitution is what the judges say it is." Of course, as we saw in Chapter 2, on the Constitution, judges are not the sole interpreters of that document. Nevertheless, judges, and particularly justices of the Supreme Court, do play a leading role in interpreting the Constitution, largely because of the power of **judicial review:** the power of courts to declare an act of a legislature constitutional or unconstitutional.

Judicial review The power of the courts to declare an act of a legislature constitutional or unconstitutional.

Nowhere in the Constitution is the U.S. Supreme Court specifically granted such authority. Instead, judicial review was inferred by the Court in the 1803 case of *Marbury* v. *Madison.*[19] After the election of 1800, which saw Thomas Jefferson and members of his party win control of the White House and both chambers of Congress, the incumbent president, John Adams, and the Federalist party attempted to maintain a foothold in government by using the time between the election and the inauguration to fill the judiciary with Federalists. First, John Marshall, secretary of state in the Adams administration, was named the new chief justice of the Supreme Court. Congress then created fifty-eight additional judgeships to be filled by loyal Federalists. (Because these appointments came in the last days of the Adams administration, they became known as the "midnight appointments.")

CRITICAL THINKING

Is there a better justification for judicial review?

So great was its haste that the Adams administration failed to deliver the commissions of four newly appointed justices of the peace for the District of Columbia. Undelivered, the four commissions were returned to the secretary of state's office, where James Madison, the new secretary of state, found them. On orders of President Jefferson, Madison refused to deliver the commissions, prompting William Marbury, one of the four whose papers were withheld, to bring suit in the Supreme Court. Marbury requested that the Court issue a writ of *mandamus* (an order to a government official to carry out a duty of his or her office) compelling Madison to deliver the commission. The case was filed with the Supreme Court directly because a congressional statute, the Judiciary Act of 1789, empowered the Supreme Court to issue such writs as an act of original jurisdiction.

Marbury's suit placed the Court in a difficult and politically charged situation. Congress had already served warning on the Court by canceling its 1802 term, and so Marbury's case had to be put off until 1803. The Court appeared to be faced with two choices, neither of them attractive. The justices could have issued the writ and ordered Madison to deliver the commission, but that would have been to no avail. Madison would most certainly have defied the writ, making the Court look powerless. On the other hand, the Court could have refused to issue the writ, but that would have amounted to an admission of impotence.

CRITICAL THINKING

Should Chief Justice Marshall have removed himself from the case?

Chief Justice Marshall, however, devised a third alternative. He wrote an opinion that attacked the administration for neglecting constitutional duties, but ruled that the Court could not constitutionally issue the writ of mandamus. The Court was powerless in this instance, Marshall argued, because the provision of the Judiciary Act of 1789 that granted it original jurisdiction to issue such writs was unconstitutional. Article III of the Constitution specifies the circumstances under which the Court possesses original jurisdiction, and the issuance of writs

of mandamus is not included. Therefore, argued Marshall, the Judiciary Act of 1789, by adding such writs to the Court's original jurisdiction, was actually attempting to alter the Constitution by simple statute rather than by the prescribed method of amendment. Since Congress may not do this, Marshall concluded that the act was null and void and the Court was without power to grant Marbury a writ of mandamus.

As a political document, Marshall's decision was a masterpiece. By arguing that Madison was obligated to deliver the commission, Marshall attacked the Jefferson administration. Yet by refusing to issue the writ, he avoided a confrontation with the president that the Court would have been sure to lose. More important, Marshall created for the Court the power of judicial review and insulated that power from attack. The only loser in the case was Marbury, who was sacrificed to Marshall's larger political design.

The political brilliance of Marshall's opinion is unquestionable, but to this day the legal reasoning employed remains subject to debate. In a straightforward manner, Marshall simply stated that (1) the Constitution is superior to any statute; (2) the Judiciary Act of 1789 contradicted the Constitution; and (3) therefore the Judiciary Act of 1789 must be unconstitutional. As an exercise in logic, the conclusion seems inescapable.

To many critics, however, Marshall's logic misses the point. Why is it the job of the Court, composed as it is of life-tenured appointees, to decide whether an act conflicts with the Constitution? Why, ask Marshall's critics, should this power not belong to elected officials?[20]

Judicial restraint Limited and infrequent use of judicial review. It is advocated on the grounds that unelected judges should not overrule laws passed by elected representatives.

Judicial activism The concept that the Court has both a right and an obligation to practice judicial review, especially in defense of political minorities.

Although judicial review has become an element of American politics, its use remains controversial. Those judges and legal scholars who find Marshall's reasoning unconvincing advocate **judicial restraint**—the limited and infrequent use of judicial review. Advocates of judicial restraint argue that the frequent use of judicial review substitutes the judgment of unelected, life-tenured officials for that of elected representatives and is therefore undemocratic. Indeed, the frequent use of judicial review, according to some critics, creates an "imperial judiciary," which makes decisions that are best left to the elected branches of a democratic government.[21] Opposing judicial restraint are those judges and legal scholars who believe in **judicial activism:** that the Court has a right, and even an obligation, to exercise judicial review. In our day activism is usually justified by liberals in the defense of political minorities, but the frequent use of judicial review and the numerous precedents overturned by the Rehnquist Court demonstrate that conservatives may also be activists.

CRITICAL THINKING

Should the Constitution be interpreted in light of changes in society, or should it have fixed a meaning?

A more recent judicial argument concerns how the Constitution is to be interpreted. One perspective on constitutional interpretation demands that justices adhere to a literal reading of the Constitution or, if the language is not specific, the intent of the provisions' authors. During the 1980s, this view, known as original intent, was forcefully advocated by President Reagan's attorney general, Edwin Meese. Meese repeatedly argued that the justices should restrict themselves to the Constitution's original intent and not its spirit. Original intent assumes that judges do not make law, but rather find it ready-made by others—those who authored the Constitution.

Opponents of that view—a loose collection of scholars and judges, conservatives and liberals—contend that many of the Constitution's most important provisions are "deliberate models of ambiguity."[22] Although these opponents often disagree among themselves on the preferred interpretation of constitutional provisions, they are united in their belief that judging involves choosing among competing values and not simply finding the law.[23]

The Implementation of Court Decisions

The pomp and circumstance surrounding the announcement of a Supreme Court decision lends credibility to the myth of finality. Yet this ceremony seldom settles the matter. Rather than being the end of the case, the Court's announcement is only the beginning of a long process of implementation.

Court orders are not self-executing, and the Court needs the cooperation of others to carry out the announced policy. It cannot force compliance: It cannot call on an army or police force to carry out its orders, nor can it levy taxes to fund their implementation. Furthermore, if a particular decision is not being implemented, the Court cannot act until someone brings suit in a lower court. Unlike the other agencies of government, courts must await cases; they cannot seek them out. Their only recourse is to signal their willingness to consider cases involving particular issues by the language that they use in deciding cases before them.

Compliance by Other Courts

Compliance is not just a matter of getting the parties in a case to go along with the decision. When the Supreme Court overturns the decision of a lower court, it generally sends (remands) the case back to the lower courts for a decision "not inconsistent" with its opinion. But lower courts do not always follow the Supreme Court's wishes.

In some cases, lower courts may find it difficult to carry out an ambiguous Supreme Court decision. If multiple concurring and dissenting opinions accompany a decision, the lower court may find it difficult to interpret. In *Furman* v. *Georgia* (1972), for example, five justices ruled that the death penalty was unconstitutional as applied in that particular case, but they could not agree on the reason.[24] Consequently, each justice wrote a separate opinion. Lower courts cannot interpret such a decision easily, and in such situations lower-court judges find it easier to substitute their own values and beliefs.

Because lower federal and state courts are independent of the High Court, they can—and occasionally do—defy the Court's rulings. There is little that the Court can do in such cases. The judges of these lower courts are sworn to uphold the U.S. Constitution but not the opinions of the Supreme Court, and the Court lacks the power to fire even the most disobedient judge. Thus the Supreme Court's

CRITICAL THINKING

What is the likelihood that a lower-court decision will be overturned?

power to reverse lower-court decisions is limited both by its inability to police lower courts and by time constraints (it cannot review every lower-court decision).

Reversal sometimes causes difficulties for lower-court judges. Judges caught between the mandates of the Supreme Court, located in far-off Washington, and the strong contradictory desires of their neighbors may find the displeasure of the High Court easier to bear than the anger of their community. Elected state judges may be especially reluctant to enforce Court orders that might anger voters, even if they personally agree with the High Court. In the 1950s, federal district court judges were deeply embroiled in the school desegregation issue—a conflict of national versus local values. Many communities resisted Court-ordered desegregation, often vehemently. Those district judges who enforced *Brown* v. *Board of Education* (1954) found themselves cut off from their own communities, as old friends and colleagues fell away. Many were threatened, and some were even physically harmed.[25]

Congress and the President

Just as the Supreme Court must depend on the so-called inferior courts to implement decisions, so too must it rely on the cooperation of Congress and the president. Both institutions have the power to aid or hinder the implementation of Supreme Court decisions.

The most important power that Congress has is its control of public funds. By providing or withholding the funds necessary to carry out Court policy, Congress can significantly affect implementation, as the history of school desegregation amply illustrates. During Lyndon Johnson's administration, Congress authorized the U.S. Department of Health, Education, and Welfare to withhold federal funds from school systems that refused to desegregate—giving the local communities a strong incentive to comply with the Supreme Court's 1954 ruling. In 1975, however, Congress, disturbed by court-ordered busing, diminished the incentive by prohibiting the withholding of funds from school districts that refused to implement busing.

CRITICAL THINKING

Should the Supreme Court have the last word on the constitutionality of public policy?

The actions of individual members of Congress may also advance or impede Court policy. Whether important political leaders defend or attack a Court decision may have much to do with the willingness of others to accept it. Clearly, the cause of school desegregation was not helped when, in 1956, ninety-six members of Congress signed the Southern Manifesto, a document attacking the *Brown* decision. Those who believed that the Supreme Court was wrong could always point to distinguished members of Congress who shared their view. Furthermore, the support of so many in Congress undoubtedly gave hope that the decision would someday be overturned.

Congress may also use its powers to directly counteract Court decisions. Decisions interpreting the Constitution, for example, may be overturned by a congressionally initiated constitutional amendment. Although the process is cumbersome and difficult, it has been used on five occasions. Most recently, the Twenty-sixth Amendment, lowering the voting age to eighteen, overturned the

decision in *Oregon* v. *Mitchell* (1970).[26] (In the *Mitchell* decision, the Court had ruled that Congress could by statute lower the voting age to eighteen in national, but not state, elections.) The Court's decision prohibiting prayer in public schools has generated hundreds of proposals for constitutional amendments. To date none of these proposals has passed both houses of Congress.

Occasionally, Congress tries to pressure the Court into reversing a decision. In 1964, for instance, angered by a series of Warren Court rulings that required reapportionment of state legislatures solely on the basis of population, Congress gave the justices a smaller pay raise than other top-level officials. To underscore the point, Republican Representative Robert Dole of Kansas proposed that the pay increase be contingent on reversal of the decision.[27]

The president and the executive branch can also vitally affect the fate of Supreme Court decisions. On the average, a president appoints a new justice every twenty-two months. Thus a two-term president has the potential to reshape the Court, and it can then negate a troublesome policy. Richard Nixon certainly intended to do just that when, in 1968, he campaigned for the presidency on the promise to appoint justices who would be tough on criminal defendants. Much of Nixon's 1968 presidential campaign was an attack on the liberal Warren Court. His four appointments to the Supreme Court, including a new chief justice (Warren Burger), managed to modify the liberal trend set by the Warren Court and even to reverse some previous liberal decisions.

Similarly, Reagan attempted to alter the direction of the Court through careful selection of nominees. Reagan's appointments of associate justices Sandra Day O'Connor, Antonin Scalia, and Anthony Kennedy, as well as his elevation of William H. Rehnquist to the post of chief justice, were designed to create a Supreme Court that was ideologically compatible with the administration. Bush's appointment of Clarence Thomas to replace Thurgood Marshall was seen by observers as a continuation of the Reagan administration's strategy.

As the most visible public official, the president may influence public opinion by his willingness to accept a decision. His silence, on the other hand, may encourage disobedience or delay implementation. President Eisenhower's initial refusal to endorse the *Brown* decision gave support to those who opposed the Court. Although in 1957 Eisenhower dispatched troops to enforce court-ordered desegregation of the schools in Little Rock, Arkansas, many commentators have argued that his initial reluctance to support the decision had encouraged the avoidance of court orders. Indeed, a Supreme Court justice of that period, Tom C. Clark, observed that "if Mr. Eisenhower had come through, it would have changed things a lot."[28]

As the head of the executive branch, the president may also order the U.S. Department of Justice to prosecute noncompliance vigorously or to make only a token effort. President Johnson's vigorous use of the department to prosecute segregated school districts was very important in implementing *Brown*. President Nixon, on the other hand, slowed the process of desegregation by curtailing the department's prosecutorial activities.

Conclusion: The Courts Are Not What They Seem

This brief discussion of the American legal system demonstrates that, no matter how much we may wish it were otherwise, the courts are political institutions. As soothing as it may be, the myth of the nonpolitical courts simply does not reflect the American legal system. Although the conflict that produced the basic structure of the federal courts occurred long ago, the potential for political discord still exists, and we should not be blind to this fact. Nor can we ignore the link between partisan politics and the courts that is inherent in the system of judicial selection. Because judicial positions go to those who demonstrate faithful service to the party, courts are staffed by individuals with considerable political experience.

The myth of finality likewise fails to capture the reality of American courts. The implementation of court decisions requires the participation and cooperation of many in the political system. A simple pronouncement from a court does not suffice.

Summary

1. Civil actions cover conflicts between private individuals or organizations; criminal law concerns wrongs done to the public.

2. The United States has fifty-two court systems, one for the national government, one for each state, and a separate system for the Commonwealth of Puerto Rico.

3. The ninety-four U.S. district courts are the trial courts for the federal system. Approximately two hundred thousand cases a year are heard by the district courts, and fewer than 10 percent of their decisions are appealed.

4. The twelve U.S. courts of appeals handle most of the appellate work in the federal system. Organized into state groupings known as circuits, the courts of appeals hear all appeals from the federal district courts and some independent regulatory agencies and departments.

5. Cases are appealed to the Supreme Court primarily either by an appeal or by a writ of certiorari. The Court has great latitude in deciding which cases it wants to hear.

6. The Constitution requires that federal judges be nominated by the president and appointed with the advice and consent of the Senate. Appointment procedures vary considerably, however, depending on the level of the court involved. The nomination of district court judges often originates with the senator or senators of the president's party from the nominee's state. These senators may exercise senatorial courtesy. Because courts of appeals are organized into circuits that cross state boundaries, no senator is entitled to exercise senatorial courtesy over these appointments.

7. Because federal judges are appointed for life, occasionally the need to remove an ill or incompetent judge arises. Because the Constitution provides for removal only by impeachment, Congress has created the position of senior judge as a means of encouraging judges to retire.

8. The public phase of the Supreme Court's business consists of oral arguments presented before the justices. These are very formalized procedures conducted under tight time constraints.

9. The most important part of the Court's work takes place in its conferences, which are closed to all but the justices themselves. In these conferences, the justices discuss and vote on the cases.

10. Once a vote has been taken on a case, the chief justice, if he is in the majority, or the senior justice in the majority assigns the writing of the opinion. The justice assigned to write the opinion must then circulate drafts of the decision to the other justices. No opinion is final until at least a majority of the Court agrees on it.

11. Justices who disagree with the majority opinion are free to write dissenting opinions explaining why they cannot accept the majority decision. Justices who agree with the majority opinion but not its reasoning may write concurring opinions.

12. Judges are often involved in interpreting the Constitution, though controversy exists over how aggressively the courts should pursue such judicial review.

13. Lower courts do not necessarily comply with Supreme Court decisions. Often they find the decisions sufficiently ambiguous to make compliance extremely difficult. When Supreme Court decisions conflict with locally held values, lower-court judges may be reluctant to displease their communities by enforcing the High Court's rulings.

14. Congress also possesses a great deal of power because the implementation of Supreme Court decisions often requires the appropriation of public funds, a function controlled by Congress. Congress can also propose constitutional amendments to overturn Supreme Court decisions.

15. The successful implementation of Supreme Court decisions also requires the cooperation of the president, or at least his acceptance of the policy. A president's willingness to accept a particular Court opinion can influence public opinion. More important, a president may seek to reshape the Court through the appointment process.



Net Work

As a general overview of the federal judiciary, the Federal Judiciary Home Page **(http://www.uscourts.gov)** is extremely helpful. You will find a comprehensive guide to the federal court system, complete with directories of federal judges, court statistics, and a glossary of legal terms.

To more fully explore the wide range of on-line legal resources, pick a Supreme Court case that interests you, find the text of the Supreme Court decision, and then follow it back in time. How far can you go in tracing its origins? There are several sites that can aid in this task, but you are likely to find the two below most helpful.

- Findlaw **(http://www.findlaw.com)** provides window to a diverse array of legal sources, including the full text of opinions.
- Cornell Law School **(http://www.law.cornell.edu)** provides another gateway to many useful law-related resources, including the full text of U.S. Supreme Court, appellate court, and district court decisions.

CHAPTER 14

Domestic Policy and Policymaking

- Making Public Policy

Stages in the Policymaking Process: Issue identification, agenda setting, policy formulation, policy adoption, policy implementation, and policy evaluation

Models of Decision Making: Rational, incremental, elite, and pluralist

- Economic Policy

Monetary and Fiscal Policies: How should the economy be managed?; Deficits, surpluses and the national debt

Economic Development Policies: What kind of economic development?

Economic Regulatory Policies: How much regulation?

- Social Policies

Aiding the Poor: *The Old Welfare System:* Too centralized; too much dependency; too expensive.

The New Welfare System: Empowering the states; ending dependency; capping welfare costs; other provisions

Meeting the Needs of the General Public: Social insurance (social security); social regulation (consumer protection, worker protection); critics of government interference

- Conclusion: The Complexity of American Public Policy

MYTH & REALITY

Are government policies and programs necessary evils?

MYTH & REALITY

When it comes to their views of government, Americans are a conflicted people, and they have been so for more than two hundred years. In the 1830s, Alexis de Tocqueville, a young French aristocrat who traveled throughout the country for nine months,[1] commented that American democracy is built on a principle of equality that promotes a strong sense of independence and individualism. At the same time, he observed, Americans believed in the "moral authority of the majority"— that is, "that there is more intelligence and wisdom in a number of men united than in a single individual."[2] These contradictory tendencies in the American political culture are as obvious today as they were in the 1830s, and they are most evident in our attitudes toward public policies.

Consider, for example, our driving behavior. Those who drive at or just below the speed limit on our nation's interstate highways have probably felt as if they were standing still while dozens of vehicles pass them by at speeds clearly in excess of the posted limits. We have all seen other drivers express their independence by failing to wear seatbelts, littering the highways, failing to signal lane changes, not slowing down in school zones or road construction areas, and committing dozens of other violations. And yet we collectively insist on tougher enforcement of the very rules that we are often inclined to break as individuals. We complain about highway and bridge tolls, but insist that every road be in good repair and wide enough to convey us to our destinations quickly. Or consider our puzzling attitudes toward tobacco and alcohol products. Our per capita consumption of cigarettes, beer, and wine remain among the highest in the world—and yet we insist on strict government regulation of who can buy them and where they can be sold. We complain about our taxes, while insisting that government spend more on everything from cleaner air and higher-quality schools to safer streets and more jobs. We openly disparage "welfare" programs and those who use them, while insisting that government provide all Americans with an economic "safety net" that protects individuals and families during hard times.

These conflicting views of public policies are sustained by one of the most powerful myths in the American political culture: the myth of *government as a necessary evil.* Traceable back to the American Revolution, it is a belief that while we need government to protect ourselves from dangers and to accomplish collective goals, we are paying a significant price for those benefits. According to the most popular versions of this myth, the heaviest price we pay is a loss of individual liberty. This position is most directly expressed in libertarian ideologies, that are becoming increasingly popular today (see Chapter 1).

We have other fears as well, including anxiety over our growing dependence on some anonymous government bureaucracy. During the heated debate over the Clinton Administration's national health care proposals in 1994, those who opposed the reforms launched a successful campaign that focused on mobilizing Americans' antigovernment feelings and fear of bureaucracy. One of the most memorable features of that campaign was television advertisements featuring a middle-class, white, fortyish suburban couple (Harry and Louise) who worried

aloud about the consequences of letting some government bureaucrat make decisions about their medical care.[3] Economists have reinforced these concerns about government solutions by arguing that public solutions to our problems are nearly always wasteful and less efficient than private market solutions.[4]

This myth has had a profound impact, particularly in the negative views of government it promotes. Historian Garry Wills has examined the government-as-necessary-evil myth and found that its roots run deep in American political history. "After studying the ways our fear of government has found expression, I was struck by the persistence . . . of [antigovernment] values."

> At times, these values uphold liberal positions, at other times conservative ones. They can show up on the left or on the right. . . . They can be found in a hippie commune or a modern militia camp. These are all good American values, and it is no wonder that people want to uphold them, especially if they believe (as they often do) that government would weaken or obliterate them. That sincere belief is behind much of the need to oppose any increase in government.[5]

However, there is a positive side to the myth as well: the idea that government actions are often "necessary." Thus, many Americans believe that only government can deal with major crises, such as an economic depression. Stories of the Great Depression of the 1930s tell of how the American economy worsened because President Herbert Hoover did nothing to rescue the U.S. economic system after the great stock market crash of 1929. According to this view, only the active intervention of government under Franklin D. Roosevelt helped to alleviate the worst consequences of the Depression.[6] In contrast, critics of America's welfare policies during the 1960s frequently tell stories of how these programs failed, leaving a legacy of social deprivation among the poor. These critics support their view of government's negative influence by pointing to stories of success among those who avoided or escaped the welfare system, or by citing a link between those programs and high crime rates or civil disorders.[7]

CRITICAL THINKING

How much impact do the media have on American attitudes toward public policy?

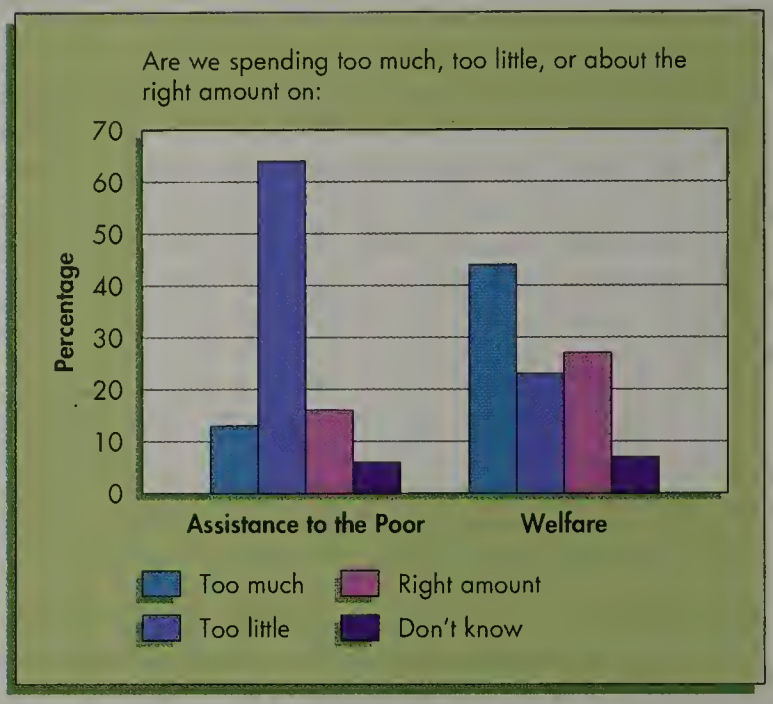
For the American public, the decision as to whether the government is more evil than necessary often depends on the specific issue or program being discussed and the way the program is presented. For example, in May 1992, pollsters asked Americans whether the government was spending too much, too little, or the right amount on "assistance to the poor." In response, 64 percent said "too little," while only 13 percent said "too much" and 16 percent said "the right amount." As Fig. 14.1 shows, the responses were quite different when the word "welfare" was substituted for "assistance to the poor." In that case, only 23 percent said "too little" was being spent, while 27 and 44 percent, respectively, said "the right amount" and "too much." Similarly, while 62 percent of those surveyed in 1993 believed that it was government's responsibility to "take care of people who can't take care of themselves," a full 80 percent agreed with the contention that "poor people have become too dependent on government assistance."[8]

Are government policies necessary? If so, are they necessarily an evil? Those questions are central to an understanding of much of the ongoing debate about

FIGURE 14.1
The Answer Depends on the Question

Americans' attitudes suggest that we are spending too much on "welfare," but too little on "assistance to the poor." This interesting contrast says a great deal about the complex attitudes of Americans toward government and public policies.

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public policies among politicians and policymakers. As we can see in the following discussion of economic and social welfare policies, the questions have no definitive answers. Nevertheless, the myth of government as a necessary evil remains important because of the dynamic role it plays in shaping public perceptions and giving force and direction to the deliberations of public policymakers.

Making Public Policy

Public policies Actions taken by government officials in response to problems and issues raised through the political system.

Public policies are actions taken by government officials in response to problems and issues raised through the political system. At the national level, public policies can emerge from each of the major institutions of government. Congress makes policy by enacting laws, such as the 1964 Civil Rights Act (see Chapter 4, on rights and liberties). Presidents can issue executive orders (see Chapter 11, on the presidency), as President John F. Kennedy did in 1961 to create the Peace Corps. As discussed in Chapter 13, on the judiciary, judges also make policy through court decisions and orders, such as the famous one in *Brown* v. *Board of Education* (1954), which led to the desegregation of southern schools. Even bureaucracies are involved in public policymaking through the rules and regulations they develop and publish. None of these institutional actions, however, occurs in a vacuum. Each is the product of formal and informal interactions among hundreds of participants inside and outside government.[9]

Stages in the Policymaking Process

Issue identification The first of six stages in policymaking, in which some event, person, or group calls attention to a problem that needs government action.

Public policymaking can be pictured as a six-stage process (see Fig. 14.2). In the first stage, **issue identification,** some event, person, or group calls attention to a problem that needs government action. During the early 1980s, for example, the increasing number of deaths attributed to acquired immune deficiency syndrome (AIDS) brought demands for money to fund research into the cause of the deadly disease. Health care professionals, the surgeon general of the United States, and groups representing homosexual men (who were at high risk for the disease) used every opportunity they could to get the attention of policymakers at all levels of American government.[10]

Agenda setting The second stage of policymaking, in which the issue or problem is seriously considered by the policymaking institution.

In the second stage, **agenda setting,** the issue or problem is seriously considered by the policymaking institution. Not all problems identified in the first stage of the process get this far. In mid-November 1953, for instance, a thick cloud of dirty air settled on New York City, causing headaches, itchy eyes, nausea, and other physical ailments. The incident lasted long enough to draw the media's attention, for the clouded atmosphere interfered with football games, astronomical observations, and other outdoor activities. The cloud eventually dissipated, and no action followed, since the immediate impact of the air pollution was not regarded as serious. It was not until nine years later that a review of public health records showed that the incident had been linked to approximately two hundred deaths in the New York area.[11] By the early 1960s, however, environmental pollution was on the agenda of national policymakers, and problems similar to New York City's "cloud"—for example, the smog that hangs over Los Angeles and other major cities—began to get serious attention.

The fact that an issue on the government's agenda gets serious attention does not necessarily mean that a policy will immediately emerge. Someone must

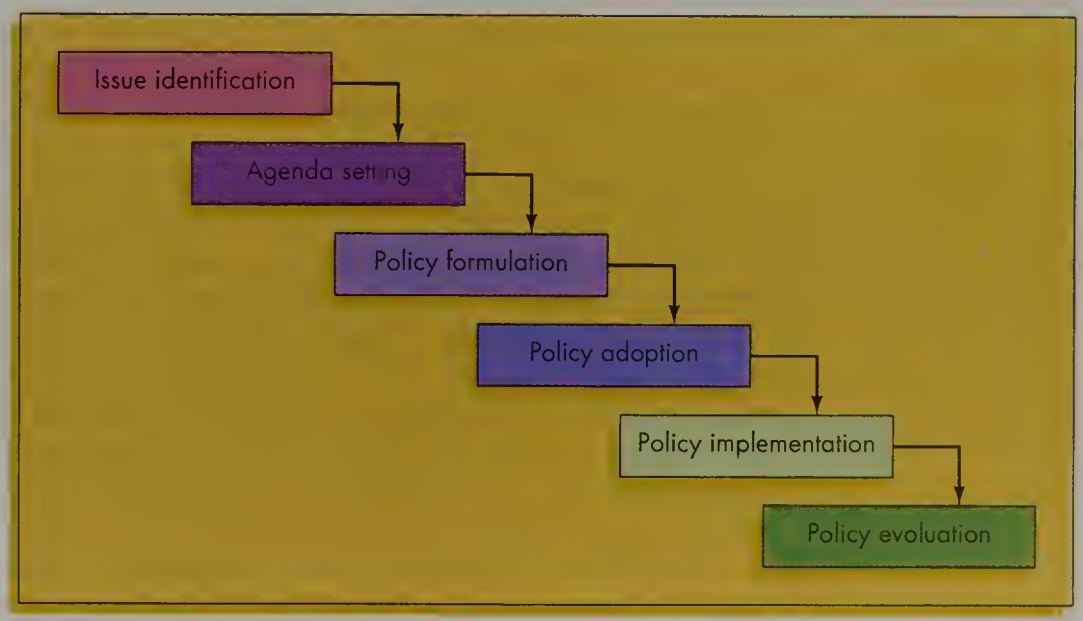


FIGURE 14.2
The Six Stages of Policymaking

develop a proposal or program that can address the issue. This third stage of the policymaking process, **policy formulation,** may take years to complete as policymakers and their staffs deliberate the pros and cons of different courses of action.

Policy formulation The third stage of policymaking, in which policymakers and their staffs deliberate the pros and cons of each issue, a process that may take years to complete.

These policy responses may be formulated within government agencies, in Congress, or by groups outside the national government, working separately or together. Both the White House and Congress looked to the federal Centers for Disease Control and Prevention for policy proposals to deal with AIDS. One major reform of the U.S. welfare system, the 1988 Family Support Act, was formulated by a group of governors working with the staff of the National Governors' Association. Five years later, President Clinton appointed a 27-person task force to develop proposals for even more significant reform. In the meantime, House Republicans had developed their own welfare reform proposals. It was not until 1996, however, that a major reform package emerged from Congress (see below).[12] In 1993, a White House task force involving dozens of government officials took nine months to come up with a comprehensive health care proposal. As the health care debate unfolded over the next year, a variety of alternative proposals emerged. By the summer of 1994, anyone attempting to follow the debate needed a guidebook to help sort out all the different proposals that had been formulated to deal with America's health care crisis.[13]

Policy adoption The fourth stage of policymaking, which is usually a fight to gain government support for a policy and demands much bargaining and compromise.

The next step, **policy adoption,** includes efforts to obtain enough support to enable a proposal to become the government's stated policy. At this point, most policy proposals—particularly congressional legislation—go through a process of bargaining and compromise and emerge significantly changed. When Congress considers tax reform proposals, for instance, what began as an attempt to close large tax loopholes may wind up creating more or different loopholes.[14] When members of Congress propose amendments to bills, they can radically change the intent of a bill or give it added meaning. In 1987, a bill funding highway projects included an amendment authorizing states to raise the maximum speed limit on interstate highways to 65 miles per hour in rural areas. In 1988, a bill intended to create a new cabinet post—the Department of Veterans Affairs—became the vehicle for passing a law giving veterans the right to sue their government.[15]

Policy adoption is no less complex in the executive branch. Executive orders, vetoes of legislation, and other presidential actions are not made arbitrarily, for the White House cannot operate in a political vacuum. After President Kennedy used an executive order to set up the Peace Corps in 1961, he did not go to Congress for funding immediately, but rather paid for its operation for nearly six months through a special discretionary account. During that period, administration officials worked to build congressional support for the program. Although Kennedy was eventually successful in gaining this support, some members of Congress questioned his use of executive powers to establish and operate a brand-new program without congressional authority.

Decisions of the Supreme Court are a special type of public policy, for they are often rooted in legal doctrines. Nevertheless, even policy adoption in

the Supreme Court involves some political give-and-take among its members, which has an impact on the resulting policies (see Chapter 13). In recent years we have learned a great deal more about what takes place when the justices of the Supreme Court decide an important case. Conferences involving all the Court's members are held regularly, and supposedly the discussions in those closed meetings sometimes focus on the political, as well as the legal, implications of a case.[16]

CRITICAL THINKING

Does it take too long for the government to take action to solve critical problems?

The policy-adoption stage can go on for quite a long time. The first national air pollution laws were passed in 1960, but they did little more than authorize the surgeon general to study the problem. Three years later, Congress set up a technical committee to monitor air pollution problems and to provide assistance to state and local governments that chose to develop and maintain antipollution programs. In 1965 and 1967, Congress required states and localities to develop antipollution programs and required federal agencies to set emission standards for new automobiles. In 1970, President Richard M. Nixon created the Environmental Protection Agency (EPA), acknowledging the importance of environmental problems. A few weeks later, Congress gave the EPA significant powers to clean America's air. Additional amendments followed during the 1970s and 1980s, and policy adoption in this area continued with passage of Clean Air Act amendments in 1990 and 1995.

Policy implementation The carrying out of policy mandates through public programs and actions—the fifth stage in the policymaking process.

Critical to the policymaking process is the stage of **policy implementation**—the carrying out of policy mandates through public programs and actions. The national bureaucracy traditionally performs this task although in recent years it has been using contracting out and other methods associated with proxy administration (see Chapter 12, on the bureaucracy). In addition, many policies require the cooperation of state and local officials and of individuals outside government. For example, when Congress passed an income tax law, it created the Internal Revenue Service (IRS) to implement it, but the government still relies on the American people to do most of the paperwork. Washington also depends on state and local officials to enforce a variety of environmental laws. As noted in Chapter 3, most domestic policies require the cooperation of private individuals or the intergovernmental relations system.

Policy evaluation The final stage in the policymaking process: looking at government actions and programs to see whether their goals have been achieved or to assess their effectiveness and efficiency.

The final stage in public policymaking often involves **policy evaluation**—looking at government actions and programs to see whether their goals have been achieved or to assess their effectiveness and efficiency. Changes in the policy or program may then be instituted quickly, slowly, or not at all. A major plane crash caused by poorly maintained equipment is likely to result in new directives being issued immediately by the Federal Aviation Administration. A report indicating that public schools are not giving students an education appropriate for the changing world economy will not result in quick changes, but it might generate plans for major long-term changes in high school curriculum and instruction. Another report indicating that interstate highway speeds in excess of 40 miles per hour result in thousands of additional deaths each year is unlikely to result in policy changes in most states because of popular pressure to keep or even raise current speed limits.

Models of Decision Making

As outlined above, the stages of the policymaking process seem both sequential and logical. What actually takes place however, is rarely so neat. During each stage, policymakers must reach many decisions about how the issue will be handled or how an adopted policy will be implemented or evaluated. Ideally, a policymaker should carefully analyze the issues being addressed, consider all alternative actions that could be taken to address those issues, accurately evaluate those alternatives, and finally select one as the government's policy. This ideal process is called the **rational model of decision making.** It assumes that the policymaker has a clear objective and all the information needed for a sound and reasoned decision, resulting in the selection of the policy alternative that offers the most efficient and effective way to achieve the desired goal.

Rational model of decision making The ideal process in which a policymaker has a clear objective and all the information needed to make a sound and reasoned decision, resulting in the selection of the best way to achieve the desired goal.

Few of the conditions required for rationality exist in the real world of public policy. Policymakers rarely have enough information to analyze all the alternatives. And no matter how much information they have, there is always some doubt about the future. This uncertainty affects not only members of Congress and people on the White House staff, but also their advisers in the scientific community and elsewhere.

Furthermore, large groups of decision makers usually have trouble reaching a consensus on goals. There are some exceptions, of course. In May 1961, President Kennedy had broad political support when he declared that the aim of U.S. space policy was to land an American on the moon by the end of the decade.[17] With such a clear and widely accepted goal, decision making in the National Aeronautics and Space Administration (NASA) seemed close to the rational model. But the NASA programs of the 1960s were not the norm. In most cases, the objectives of public policies are too vague or controversial for the rational model to apply.

Is there a different model that explains how policymakers really make their decisions? One possibility is the **incremental model of decision making.** According to this model, public policymaking is a process by which, little by little, decisions add to or subtract from the policies that already exist. Each year, for example, the national government reconsiders the amount of money it will spend on highways and education. Rarely, however, do the White House and Congress start their annual deliberations with a clean slate. Instead, in most cases executive officials and members of Congress generally begin by assuming that most current highway and education programs will remain intact; usually, the major issues are whether to expand or reduce spending for these programs and, if so, by how much. Sometimes this leads to marginal changes in the policies as well. For instance, each time a major program such as social security comes up for reauthorization before Congress, amendments are added to meet the new or special needs of recipients that have emerged since the law was last revised. Thus public policies and programs develop and change from year to year through marginal adjustments.

Incremental model of decision making A more realistic model of decision making that sees public policy as a process of making decisions at the margins of current policies by adding to or subtracting from those policies.

Elite model of decision making The theory that public policies are made by a relatively small group of influential leaders who share common goals and points of view.

Pluralist model of decision making A theory that attributes policy outcomes to pressures exerted by different interest groups.

Other models of decision making trace public policies back to certain groups or classes of people. The **elite model of decision making** holds that public policies are made by a relatively small group of influential leaders who share common goals and points of view. President Dwight D. Eisenhower may have had this model in mind when, in his 1961 farewell address to the nation, he warned against the emerging influence of the "military-industrial complex," in which high-level military and industry leaders make decisions that have widespread effects throughout the rest of the country and the world.

In contrast, the **pluralist model of decision making** attributes policy outcomes to pressures exerted by different interest groups. Specific policy choices reflect the relative influence of these interests at given points in the decision-making process (see Chapter 8, on interest groups). Thus, although environmentalists might have the upper hand in Congress, advocates of deregulation might be more influential in the White House or at the EPA. This model assumes that public policies are the product of bargains and compromises among the various interests and policymakers.

CRITICAL THINKING

Is the country run by a small elite group? Or is the policy-making system open to anyone who wishes to get involved?

The models may differ, but there is one point on which all observers agree: Public policies are the result of a dynamic process involving a variety of participants and a wide range of factors. One constant feature of the process is the debate between those who believe strongly in the necessity of government action and those who fear the consequences of relying too much on government programs. That debate has an impact on almost all domestic policies, especially in two major areas of concern: economic policy and social policy.

Economic Policy

What should government's role be in managing the economy? For many Americans, the answer depends on whether one emphasizes the "necessary" or the "evil" part of the dominant myth. Those who stress the "necessary" part of the myth fault government for doing too little. They believe that government must be more active in guiding the American economy, despite the inefficiencies that might result. They argue that because the private marketplace cannot meet the basic needs of many citizens, the government must step in and correct its imperfections. In contrast, others think government is likely to interfere too much in economic matters. They view most public policies as needlessly restricting the operations of the marketplace and damaging the nation's economic health.

Behind this debate is the fact that the national government has been engaged in economic policymaking for most of its history. Government intervention in the marketplace can be traced to colonial times.[18] Colonial governments offered payments (called bounties) to businesses that made large

investments in the manufacture of certain products or increased the exportation of locally produced goods. In 1640, for example, Massachusetts offered bounties for the production of wool products. In 1661, Virginia awarded bounties of large quantities of tobacco to shipbuilders and ship owners for every vessel they docked in the colony. Other forms of business support were available as well. Many colonies provided public instruction to train young men in tanning, silk production, lumbering, and similar trades. Colonial governments even owned and operated businesses and banks. Many of these activities continued long after the Revolution as states and local governments actively promoted their economies with tax breaks, low-cost loans, grants-in-aid, and franchises to certain businesses.

Alexander Hamilton, the first secretary of the treasury, and others tried to give the national government a major role in the economy during the presidencies of George Washington and John Adams. Hamilton felt that the young nation's future depended on a strong economy, and he believed that the national government should play a major role in shaping that economy. In contrast, Thomas Jefferson and his successors (especially Andrew Jackson) strongly opposed any form of central control. They believed that economic policy should be left to local and state governments. This opposition, however, did not stop some national policymakers. Between 1816 and the early 1830s, members of Congress from the northeastern states won passage of banking and tariff legislation favorable to their small but growing manufacturing and trade businesses. During the 1830s, the power in Congress shifted toward agricultural interests in the South and West. With that shift came lower tariffs and other economic policies favoring farmers and plantation owners. Railroads were important to agrarian America, and between 1850 and 1857 Congress turned over more than 25 million acres of public land to railroad companies.

CRITICAL THINKING

Would the U.S. economy have grown and prospered without government intervention?

After the Civil War, Congress became much more involved in the nation's economy by promoting westward expansion and the growth of business and by establishing regulatory agencies to control and monitor certain industries. But in spite of these efforts, throughout the late nineteenth and early twentieth centuries, the economy remained subject to boom-and-bust cycles, culminating in the Great Depression of the 1930s.

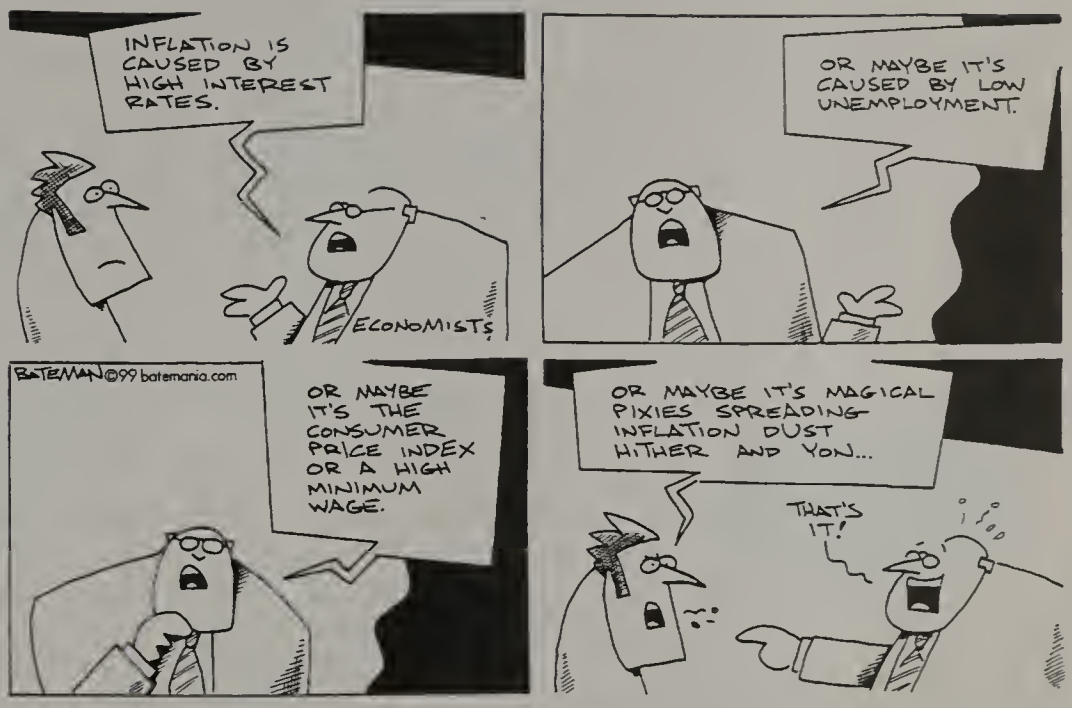
The Great Depression became a watershed era, as President Franklin D. Roosevelt's administration responded with a series of popular programs known as the New Deal to help promote recovery and stabilize the economy. Two major dimensions of national economic policy emerged during this period: monetary policy, involving control of the money supply, and fiscal policy, involving changes in government spending and tax rates.

Monetary and Fiscal Policies

Two major tasks that the national government took on as a result of the Great Depression were to maintain stable prices and to maintain orderly growth. A key

The Economic Puzzle

Economic policy-making is made more difficult by the uncertainties of just what is causing the problems officials want to solve.



factor in meeting these goals has been the national government's ability to manage the supply of money circulating in the economy.

Monetary Policy. Economists talk of tight and loose money supplies. A *tight money supply* exists when the amount of money circulating in the economy is low relative to the demand for money by consumers and investors. Basic economics teaches that when the money supply is tight, interest rates (the cost of using someone else's money) tend to be high and the cost of most goods and services is likely to fall. A *loose money supply* exists when the amount of money is high relative to the demand for money. During these periods, interest rates decline and prices of goods and services increase. Thus economists attribute periods of both high and low interest rates, deflated and inflated prices, and a variety of related economic conditions to the supply of money circulating in the economy.

Monetary policy The manipulation of the money supply to control the economy. The Federal Reserve System, or "Fed," is the principal mechanism for making monetary policy.

Monetary policy—the manipulation of the money supply to control the economy—has become one of the government's major economic management tools. The principal mechanisms for carrying out monetary policy are in the hands of the Federal Reserve System, also known as "the Fed" (see Fig. 14.3). The Federal Reserve System, established in 1913, consists of twelve regional banks and a Federal Reserve Board, which is empowered to regulate the circulation of currency in the U.S. economy. When the economy is sluggish—when not enough money is being invested to maintain economic growth or when unemployment is high—policymakers at the Fed will try to stimulate economic activity by increasing the supply of money. With more money in circulation, people will be likely to make purchases or investments, which, in turn, will generate

business activity and jobs. If policymakers think that the economy is overheated and generating too much inflation, they can reduce the supply of money in an attempt to slow down economic activity.

The Fed's policies are often influenced by recent history.[19] The double-digit inflation of the late 1970s and early 1980s was still fresh in the minds of the monetary policymakers who sat on the Federal Reserve's governing board as the U.S. economy began to pull out of its long recession during 1993 and 1994. While most Americans welcomed the signs of recovery, the Fed's governors saw them differently. Fearing the return of inflation, they began raising interest rates to help keep inflation in check. Advocates of more rapid economic recovery openly criticized these decisions, for they feared that higher interest rates would slow down investment and perhaps stall economic growth.

The role of the Fed was no less controversial during the boom economy of the late 1990s. While the economy went through a transformation brought on by an expanding global economy and a revolution in information technology, the Fed remained vigilant against inflationary pressures. Led by its chairman, Alan Greenspan, the governing board began raising interest rates whenever there were signs of inflation. Although some political leaders and economic analysts criticized these policies as too cautious, President Clinton and the Congress rewarded Greenspan in 2000 with his fourth four-year appointment as chair of that important policymaking body.

Fiscal Policy. During the Depression, policymakers discovered that changes in how much the government spent and how much it collected in taxes could influence overall economic performance. The use of this **fiscal policy** became another way to manage the general performance of the economy. According to a widely accepted economic policy theory, during sluggish periods, the federal government can stimulate economic activity through its purchases of goods and services. By reducing taxes, it can put money in the hands of consumers, who can further stimulate economic activity through their own increased purchases and investments. If, on the other hand, the economy is overheating, the government can cut spending and raise taxes, which takes money away from consumers and investors and thus reduces demand.

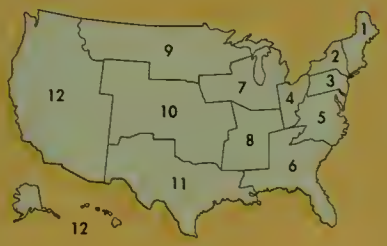
Fiscal policy The management of government expenditures and tax rates as a means for conducting national economic policy. Policymakers raise or lower government spending and taxes to execute fiscal policy.

How Should the Economy Be Managed? The debate over how to manage the economy has raged between those who believe that the government should be using monetary and fiscal tools to manage the overall direction of the economy and those who believe in a much more limited government role. The advocates of government activism include the **Keynesians**—the followers of John Maynard Keynes (pronounced "canes"), a British economist. His theory of deficit spending during periods when the economy is sluggish provided the rationale for fiscal policies from the 1930s through the 1960s. The Keynesian approach is reflected in the *Employment Act of 1946,* which made national government officials responsible for ensuring maximum production, high employment, and increased purchasing power in the American economy. The sustained period of

Keynesians Followers of economist John Maynard Keynes. They advocate government spending when the economy is sluggish (even if a deficit results) in order to revive the economy.

FEDERAL RESERVE BANKS

Twelve banks representing the natian's twelve Federal Reserve districts. The twelve manage the day-to-day needs af the banking system by maintaining a stable flaw af maney.



The banks, by districts:

1 Boston
2 New York
3 Philadelphia
4 Cleveland
5 Richmond
6 Atlanta
7 Chicaga
8 St. Louis
9 Minneapalis
10 Kansas City
11 Dallas
12 San Francisco

What They Do

- Act as lender af last resart ta banks, savings assaciatians, and credit unians in trauble
- Keep reserves depasited by depasitary institutians
- Supply currency and cains ta banks
- Destray warn-out bills, cains
- Operate clearinghauses far checks
- Serve as fiscal agent far the U.S. Treasury
- Canduct damestic and fareign manetary aperatians thraugh the New Yark Federal Reserve Bank as agent far the Federal Open Market Cammittee

BOARD OF GOVERNORS



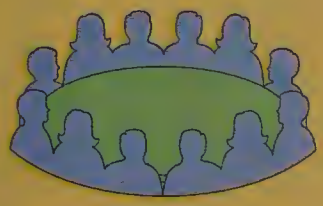
Seven members appainted by the president and canfirmed by the Senate. Terms are 14 years. The president names ane member as chairman far a faur-year term. The baard is based in Washingtan, D.C.

What It Does

- Helps carry aut palicy far regulating the supply af maney and credit by:
  –Setting reserve requirements far the depasitary institutians
  –Setting the discaunt rate an the Fed's laans ta banks
- Makes margin rules far purchases af securities an credit
- Oversees majar banks by regulating the natian's bank halding campanies
- Inspects and regulates state-chartered banks that are members af the reserve system
- Manitars the ecanamy
- Deals with internatianal manetary prablems
- Enfarces cansumer-credit laws
- Supervises Federal Reserve banks

FEDERAL OPEN MARKET COMMITTEE

Twelve members: The seven Federal Reserve gavernars and the president af the New Yark Federal Reserve Bank plus faur af the presidents af the ather eleven Federal Reserve banks an a ratating basis.



All twelve bank presidents attend the FOMC meetings, held every five to eight weeks.

What It Does

- Sets averall palicy far regulating the supply af maney and credit in the cauntry.
- Helps carry aut that palicy by directing the "trading desk" af the Federal Reserve Bank af New Yark ta buy and sell gavernment securities in the apen market

FIGURE 14.3 The Long Reach of the Federal Reserve

Source: Copyright, Jan. 27, 1986, *U.S. News & World Report.*

The Chairman of the Board

Alan Greenspan has been Chairman of the Federal Reserve Board since 1987 and will complete his current term in 2004. He is regarded by many as the most influential economic policymaker in America.



relative prosperity from the late 1940s until the late 1960s led many to assume that such government intervention had made the threat of stagnation, let alone major recessions, a thing of the past.[20]

Monetarists A group of economists who reject the argument that constant government intervention in the economy can bring either sustained prosperity or stability.

The **monetarists,** a group of prominent economists led by Milton Friedman, reject the argument that constant government intervention in the economy can bring either constant prosperity or stability. They believe that the economy kept growing between 1946 and 1970 in spite of government fiscal and monetary policies, not because of them. Not only is government intervention in the economy not a solution, it has prevented even stronger economic growth. They argue that government intervention should be limited to maintaining a consistent growth in the nation's money supply in order to control inflation. During the 1970s and early 1980s, when the U.S. economy went through a period of both high inflation and rising unemployment, the country's economic policymakers gave greater attention to the monetarists' argument that government was doing too much through fiscal policies.[21]

By the late 1990s, many analysts had come to the conclusion that neither the Keynesians nor the monetarists had the definitive answer to how the economy should be managed. Some have argued that a "new economy" emerged in the last decade of the twentieth century, and that a new approach to managing the economy must be developed in order to deal with the changed conditions.[22] Such an approach has yet to emerge, but it is likely that the "necessary evil" myth will continue to play a critical role in shaping the policy choices of the future.

National debt The total amount of money the government owes as a result of overspending.

Budget surplus The result when budget revenues exceed expenditures.

Budget deficit The result when expenditures exceed revenues.

CRITICAL THINKING

Is government debt ever a good thing?

Deficits, Surpluses, and the National Debt. Two central issues in the ongoing debates over fiscal and monetary policies are the size of the federal deficit and what to do with any budget surpluses. The instrument for dealing with both questions is the national debt.[23] The **national debt** is the total amount of money the federal government owes as a result of having spent more funds than it has received in revenues. Each year the federal government accumulates either a **budget surplus** (when its revenues, or receipts, exceed spending, or expenditures) or a **budget deficit** (when expenditures exceed revenues). During most of the 1980s, the federal government recorded yearly deficits of between $73 billion and $221 billion. In 1992 the deficit reached a record level of $290 billion, though it declined to $255 billion the following year. After that, the annual deficit continued to decline. By the end of fiscal year 1996, it had decreased to $107 billion—less than half of its 1993 level. By 1998, the budget was generating a surplus ($69 billion that year; $124 billion in 1999), and it was projected that surpluses would continue to grow through at least 2005, if not beyond. Despite that improvement, by October 1999 the national government's total outstanding debt was more than $3.6 trillion (see Fig. 14.4).

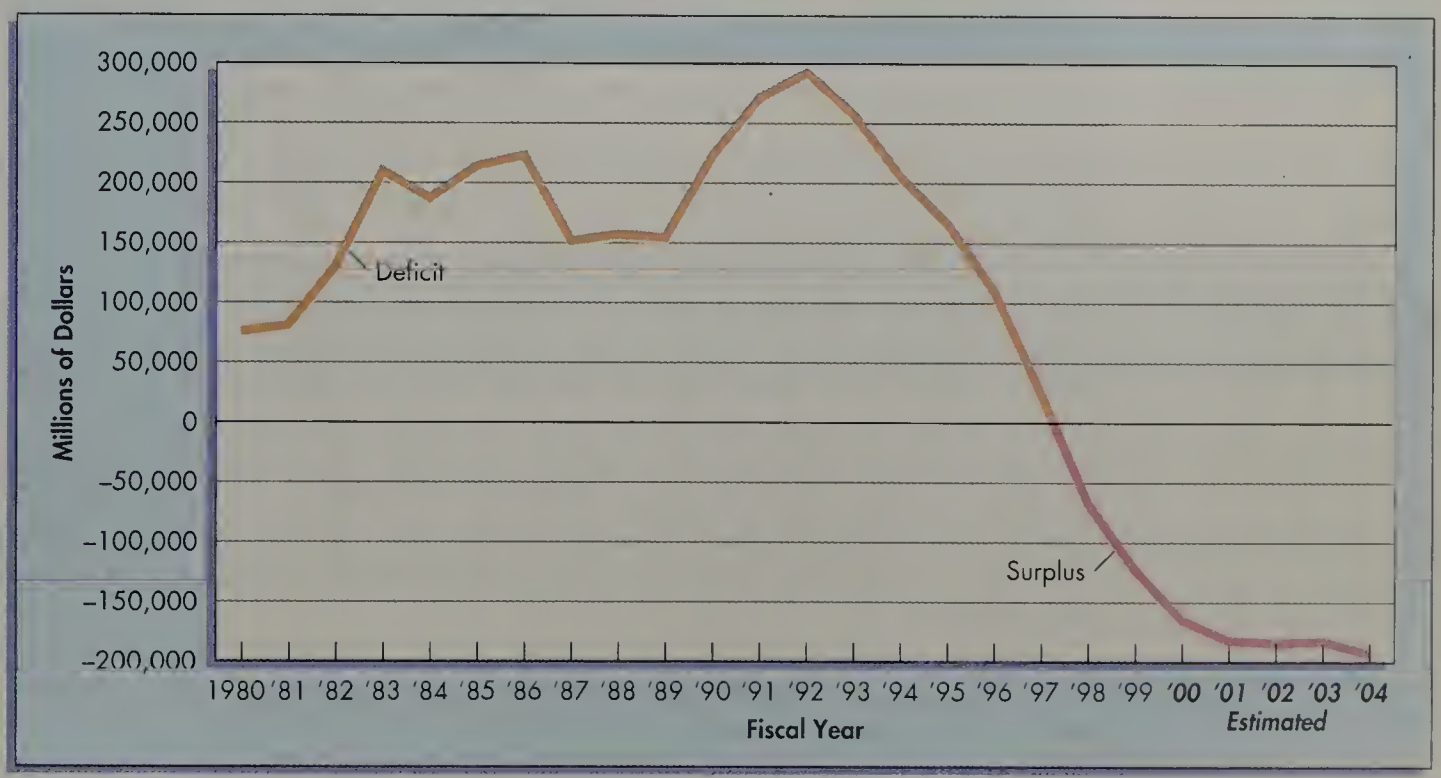


FIGURE 14.4
The Federal Budget Deficit, 1980–2004 (est.)

After many years of federal deficits adding to the national debt, the U.S. government started generating budget surpluses in the mid-1990s.

Source: U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2001,* Historical Tables.

It is difficult to pinpoint the cause of this huge debt. Some of it has resulted from actions taken by the federal government during times of national emergency, such as a war or major economic depression. When Franklin D. Roosevelt became president in 1933, he inherited a national debt of $22.5 billion. By the time the United States entered World War II, the debt had climbed to $48 billion. During that war, the federal government financed about 60 percent of its spending through borrowing. At the completion of the war, the national debt stood at $280 billion. Another reason for the national debt is that we expect government to make large-scale capital investments that generate little or no return in the short term, and even in the long term. Unlike the situation in the private sector, where investments in buildings and equipment are expected to generate income and pay for themselves over time, the government's investments include highways, weapon systems, airports, and school buildings—all important **infrastructure projects** that are necessary for national economic health but do not bring in sufficient revenues to offset their costs.

Infrastructure projects
High-cost government projects such as highways and school buildings that are provided to support and enhance the economic health of the nation.

A third reason for government indebtedness is the growth of mandatory spending, especially for **entitlement programs.** These programs, such as social security and unemployment benefits, commit the government to supplying funds or services to all citizens who meet set eligibility requirements. Because the amount of money spent depends on the number of people who meet those standards, this spending is uncontrollable from year to year. For example, as more people reach retirement age or as more become unemployed during a recession, government spending increases without any congressional or executive action. The same is true for interest payments on the national debt: The government has no choice but to spend the required amount. Fig. 14.5 illustrates the past and projected trends in mandatory spending.

Entitlement programs
Programs such as social security that commit the government to supply funds or services to all citizens who meet set eligibility requirements.

Still another significant reason for the growing national debt is that the American public sometimes demands more goods and services than it is willing to pay for through taxes or special fees. Politicians rarely advocate tax increases, and in recent years many elected officials have felt the impact of "taxpayer revolts" at the voting booths. Those same voters, however, are reluctant to support government officials who propose reductions in popular programs. The heads of families with college-age children, for instance, may lead the fight against a local property tax increase or a state sales tax measure while insisting that state colleges keep tuition costs low and guarantee admission to their sons and daughters.

Finally, government debt can increase when policymakers decide to fund current spending through borrowing rather than through taxes in order to sustain or stimulate economic activity. Helping the economy has been the primary reason used to justify the huge federal deficits that have been piling up in recent years. It is a strategy based on the Keynesian fiscal policy approach described earlier.

Regardless of what has caused the large U.S. national debt, its size is staggering to most people. During the 1990s, the debt became a major public policy issue. But it is not only its sheer size that worries many policymakers and analysts.

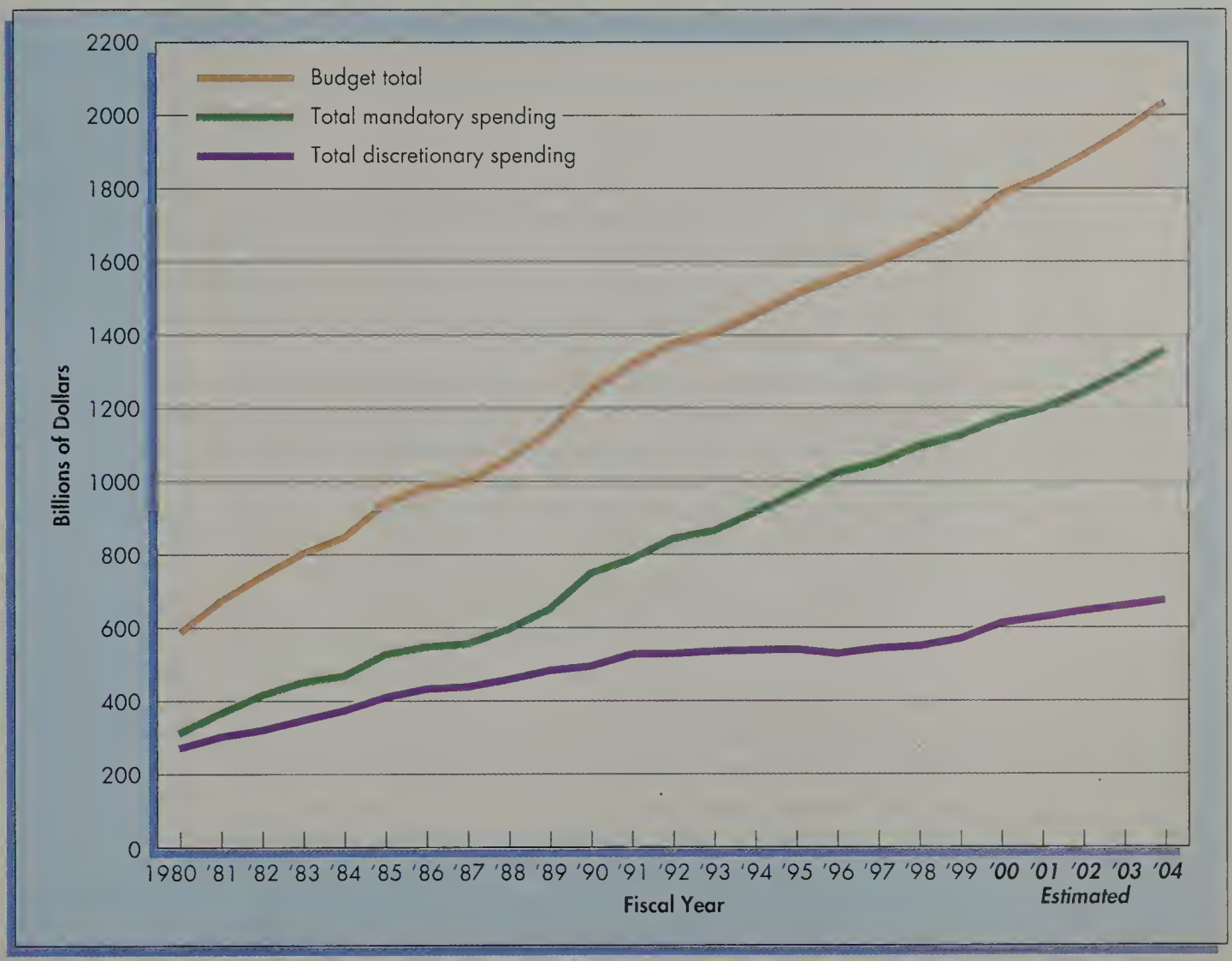


FIGURE 14.5
Mandatory and Discretionary Spending, 1980–2004 (est.)

A good portion of the increase in the federal budget has been linked to the growth in mandatory spending.

Source: U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2001*, Historical Tables.

Some believe that it is not fair to burden future generations with debt in order to finance our current consumption of public goods and services. Others see a large national debt as inflationary—that is, as causing higher prices for the private-sector goods and services we purchase today. Still others argue that financing the national debt is pushing all interest rates higher, thus making it more difficult for consumers and businesses to borrow money.[24]

Another school of analysts and policymakers argues that critics of the national debt are wrong. Relatively speaking, the public debt is not all that high.

For example, while the federal government owed $3.6 trillion in 1999, American households owed $6.4 trillion and U.S. businesses owed nearly $5.6 trillion.[25] Nor is the national debt too large when it is measured against the country's assets or the annual gross national product. Some point out that whereas the national government's debt was growing for most of the post-Cold War period, state and local governments often ran budget surpluses each year that offset the national debt. Others stress the fact that most of the national debt is owed to ourselves—to the millions of Americans who directly or indirectly hold U.S. savings bonds, Treasury notes, and long-term Treasury bills. And many of these analysts emphasize that the health of the American economy has frequently depended on the stimulus provided by government deficits.[26]

The concern with the growing national debt in the 1980s resulted in a number of efforts to reduce the annual deficits. As discussed in Chapter 10, Congress implemented a number of reforms of the budgetary process in what proved to be a futile effort to reign in government expenditures. In 1988, Congress passed the Gramm-Rudman-Hollings Act, which included a plan for reducing the annual deficit to zero by 1993. That plan eventually failed, and was replaced by a series of agreements that were no more successful.

Reducing or eliminating the national debt played a major role in the 1992 presidential race. Independent candidate H. Ross Perot made the issue of deficit reduction the focus of his campaign, calling for higher taxes and spending cuts. Stressing the need to stimulate the economy, Democratic candidate Bill Clinton offered a plan combining some tax increases with an "investment" strategy. And President George Bush presented a debt-reduction strategy built on a promise of no new taxes and spending cuts. Once in office, Clinton proposed a $500 billion deficit reduction plan as part of his first budget. Congress passed the plan, but only after a very close vote in both the House and Senate. By November 1994 the annual deficit was declining and the economy was on the rebound. The deficit had declined from $290 billion in fiscal year (FY) 1992 to $255 billion in FY 1993 and $203 billion in FY 1994. Nevertheless, most observers were pessimistic about the country's ability to slow spending enough to make significant cuts in the overall national debt.

Balanced budget amendment A constitutional amendment proposed as a means of forcing Congress to deal with the national debt problem.

When a Republican majority took control of Congress after the 1994 elections, the debate over deficit-reduction strategies became more heated. Public and congressional support grew for a **balanced budget amendment** to the U.S. Constitution that would force Congress to keep annual expenditures below government revenues (see Chapter 2, on constitutional foundations). In 1995 the Republican-led Congress placed a balanced budget amendment high on its agenda in fulfilling its "Contract with America."[27] The Republican-donated House of Representatives took swift action and passed a resolution that went to the Senate, where it was defeated by one vote. The balanced budget amendment was brought before the Senate again in 1997—and once again lost by a single vote. In November 1995, meanwhile, a stalemate over cuts in federal spending had led to a major shutdown of the federal government.

The economic boom of the late 1990s radically altered the debate over government spending and deficits. With the federal budget generating annual

CRITICAL THINKING

Was President Clinton correct in claiming that his administration helped create and sustain the economic boom of the late 1990s?

surpluses starting in 1998, the question became how to spend the excess revenues. Some policymakers favored tax cuts, while others made paying down the accumulated debt or shoring up the Social Security system (see below) priorities. The question of what to do with the surplus became an issue in the 2000 presidential campaign, and immediately upon taking office George W. Bush began pushing for the $1.6 billion tax cut he had urged during the campaign. After gaining the public support of Federal Reserve Chair Greenspan, the long process of putting together a tax cut package began in earnest in early spring 2001.

Economic Development Policies

Economic development policies Policies intended to promote and protect businesses in order to enhance overall economic growth.

Tariffs Taxes on goods brought into the country from abroad; they are often intended to protect growing industries from foreign competition.

In addition to monetary and fiscal policies to manage the economy and help stabilize it, policymakers have used **economic development policies** to help the economy grow. In the second half of the nineteenth century, Congress adopted policies that were intended to protect and promote the growth of American businesses. It also promoted westward expansion by providing land grants to railroads and potential settlers. And it passed steadily higher import **tariffs**—taxes on goods brought into the United States from abroad. These tariffs were intended to protect growing industries from foreign competition.

Tariff and Free Trade Policies. For much of our history, our national economic development policies were closely associated with our tariff policies. In the 1800s, American business developed behind a wall of high protective tariffs on imported goods and services. From the turn of the century until 1929, tariffs continued to increase slowly. They took a big leap with enactment of the Hawley-Smoot Tariff of 1929. Today Hawley-Smoot is often seen as a major cause of the Great Depression because of the turmoil it created in international markets. Consequently, Congress has been reluctant to pass protective tariff legislation for more than half a century. Most policymakers believe that **free trade** (the abolition of tariffs and other trade barriers) is the best policy to follow.[28]

Free trade An international economic policy that calls for the abolition of tariffs and other barriers so that goods and services may be exchanged freely among nations.

Balance of trade The net difference between the value of what Americans buy and sell overseas.

The free trade policy raised little controversy from the 1940s through the 1970s. During those years the U.S. **balance of trade**—the net difference between the value of what Americans bought and sold overseas—ran a surplus as Americans exported more goods and services than they imported. In 1975, for example, the United States exported $18 billion more in merchandise than it imported. By contrast, in 1994, Americans imported over $170 billion more in goods and services than they exported—the highest trade deficit in the nation's history. Furthermore, by 1985 the United States had become a debtor nation: The value of foreign investment in America exceeded U.S. overseas investment by more than $110 billion.[29]

Responding to these conditions, some members of Congress advocated raising tariffs or taking other policy measures to protect U.S. industries and jobs from foreign competition. The Reagan, Bush, and Clinton administrations, as well as other advocates of free trade, opposed such proposals, insisting that free and open international markets are the answer to trade deficits. The problem, they contended, was rooted in the barriers to free trade imposed by other

CLOSER TO HOME



An Economic War Between the States?

Like the national government, states and local communities have actively engaged in economic development policies throughout their history, mostly as a means of protecting local businesses from outside competition. These protective endeavors have since been replaced by state and local efforts to attract industries and jobs to their jurisdictions. Such programs have been labeled "smokestack chasing."

Ironically, aggressive government programs to attract jobs to particular areas had their start and greatest success in the South—a region traditionally associated with antigovernment sentiments. The pro-business attitude of many southern politicians offset any reluctance to use government's economic development powers.

The first statewide program to promote smokestack chasing emerged in Mississippi during the 1930s. By the 1970s, several southern states had demonstrated a willingness and aptitude for providing the tax breaks, subsidies, and employment programs needed to get major corporations to shift some of their operations below the Mason-Dixon line. The trend continues today, but the efforts are no longer limited to southern states.

Some people worry, however, that the competition among states and localities for business has gone too far. Indeed, some state officials have even called on the U.S. Congress to regulate the most abusive forms of smokestack chasing. The Ohio state senate, for example, passed a resolution in May 1996 asking the federal government to consider putting a halt to the use of federal block grant funds for economic competition. This is a major development, considering that Ohio is one of the states that has been more successful in attracting business. What concerned the Buckeye State legislators was the misuse of federal resources in the competition among the states.

What else could the federal government do? Some have advocated national rules that would require each state and community to provide full disclosure of what they offered a company targeted for relocation or expansion. Others have suggested that Congress change tax and welfare laws to help level the competitive playing field (some would say "battlefield") among the states.

The likelihood of federal government intervention is not great. There seem to be too many economic development weapons available to states and localities. How far will states go to draw a business within their borders? Although North Carolina was willing to subsidize Mercedes-Benz to the tune of $100 million if it would locate there, the state lost out to Alabama, which offered three times as much. Besides tax breaks and subsidies, many states have established funds that can be used as venture capital to attract new businesses, while other states promote business start-ups through "small business incubator" programs. State governments have also created special enterprise zones, where sales taxes and even wage rates can be lower in order to attract business to the area. In Oregon, a portion of the proceeds from the state lottery is earmarked for statewide economic development projects. Other states have allocated more and more of their general revenue funds for similar programs.

Are there alternatives to this ongoing war besides federal regulation of state economic policies? A legislator from Maryland has advocated negotiated agreements among the states to halt or moderate the competition—the equivalent of treaties that would bring peace to the war-torn economies of the most competition-driven states. Another tactic has been legislation, proposed in several midwestern states, that would prohibit company-specific efforts, such as those targeted at Mercedes-Benz.

Instead, each state would be restricted to broad-based programs that lowered taxes across the board or provided employment training for all—not just for those who worked for a designated company.

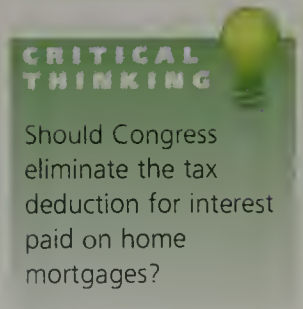
Students of state economies see this last proposal as the latest step in a three-stage evolution of economic development policies. During the initial stage—or "first wave"—efforts focused on business-specific programs as a means of bringing established companies to the area. The "second wave" saw a shift toward local business development efforts, supported by more state services for new enterprises. The "third wave" is taking a new direction: developing policies that make the regional environment friendly to new and existing business—policies that will foster success and facilitate growth. Time will tell if the achievements will be real or merely wishful thinking.

See Ann O'M. Bowman and Richard C. Kearney, *State and Local Government*, 4th ed. (Boston: Houghton Mifflin, 2000), chap. 14; also visit a site developed by the Federal Reserve Bank of Minneapolis to promote discussion of this issue (http://woodrow.mpls.frb.fed.us/sylloge/econwar/).

countries, especially Japan. Instead of protective tariffs, they undertook diplomatic and other kinds of political pressures to persuade those nations to lower their barriers to the importation of U.S. goods and services.

The debate over free trade policies came to a head three times during the Clinton years. When he entered office, Clinton pushed for passage of the North American Free Trade Agreement (NAFTA), which had been negotiated by President Bush. The battle for ratification of the treaty was hard fought, pitting a coalition of labor, consumer, and farm groups against a coalition headed by some of the nation's top corporations. NAFTA was passed in 1993, but it remains a controversial policy, with opponents organizing to prevent its expansion.[30] The free trade issue made headlines again in December 1999, when the World Trade Organization (WTO) held a major meeting in Seattle, Washington. Formed in 1995 as an international organization designed to establish and enforce the rules of world trade, the WTO has been regarded by some U.S. groups as a threat to American jobs and the world environment. Protests by anti-WTO groups at the Seattle meeting turned violent and brought the issues of free trade back into focus for many Americans.[31] The debate was joined again in the fall of 2000 when Congress considered legislation that would remove potential restrictions on free trade with China, and on October 10 President Clinton signed that bill into law despite strong opposition from many members of his own party.

Tax Incentives. Tax breaks, too, can promote economic activity in certain industries. For example, the home-building industry has benefited greatly over the past several decades from a provision allowing Americans to deduct their home mortgage interest costs from their personal income taxes. Another well-known but less-popular tax break was an oil depletion allowance. Introduced during the 1920s, this tax break absolved owners of oil- or gas-producing properties from paying taxes on more than a fourth of their income. Experts estimate that this tax break saved these property owners as much as $2.5 billion annually. The tax break promoted oil and gas exploration, but many critics





Protesting Free Trade

A growing number of Americans expressed concern about free trade issues during the 1990s. In December 1999, thousands of protestors took to the streets of Seattle where the controversial World Trade Organization was meeting.

thought its benefits were excessive and much too costly. It took more than fifty years, however, to get the tax break eliminated.

Industrial and Supply-Side Policies. During the 1980s, economic policy discussions often centered on a debate between two strategies. Some analysts argued that policymakers must develop a comprehensive economic development strategy for restructuring the economy. Under this approach, known as **industrial policy,** the United States would abandon certain industries in which labor costs are too high for successful competition with other nations. At the same time, it would rescue other industries and make them competitive in the world market. Most advocates of industrial policy also called for investments in new high-technology and service industries.

By contrast, advocates of **supply-side economics** believed in giving more attention to policies that would promote increased production of goods by giving incentives to private producers. Thus supply-siders have supported cutting

Industrial policy A comprehensive strategy for using government policies to restructure the nation's economy.

Supply-side economics An economic policy strategy that advocates increasing the production of goods by cutting taxes to help stimulate investment, lifting regulations in the marketplace, and eliminating other government restraints on private business initiatives.

taxes to help stimulate investment, lifting regulations in the marketplace, and eliminating other government restraints on private business initiatives. Supply-siders claim that past government intervention in the economy relied too much on consumer demand to stimulate economic growth and imposed too many obstacles to private investment. According to supply-side advocates, only through policies that increase suppliers' incentives can jobs be created and the economy grow.

Economic Regulatory Policies

Economic regulatory policies Economic policies through which the government monitors and controls critical industries and sectors of the economy.

Along with economic development policies, Congress also expanded the scope of economic policy in the late 1800s to include **economic regulatory policies,** through which government monitors and controls critical industries and sectors of the economy. The **Interstate Commerce Act of 1887** established the first regulatory commission, the *Interstate Commerce Commission (ICC),* and authorized it to regulate prices and standards of service for interstate rail companies.[32]

Interstate Commerce Act of 1887 Legislation that established the first regulatory commission, the *Interstate Commerce Commission (ICC),* and authorized it to regulate prices and standards of service for interstate rail companies.

Regulatory Agencies. During the next fifty years, Congress established other major economic regulatory agencies (see Chapter 12, on the federal bureaucracy). The *Food and Drug Administration (FDA)* came into being in 1906 to protect consumers from health-threatening products. The *Federal Trade Commission (FTC)* was formed in 1914 to provide safeguards against unfair methods of competition and deceptive practices in the marketplace. In the depths of the Great Depression, Congress created several other agencies. The *Federal Communications Commission (FCC)* was established to regulate the interstate telephone, telegraph, radio, and other telecommunications industries; the *Securities and Exchange Commission (SEC)* was to oversee the activities of businesses in the securities and investment markets; and the Federal Power Commission (now called the *Federal Energy Regulatory Commission, FERC*) was to regulate the interstate production and distribution of electric power and natural gas. Reacting to widely publicized episodes of violent confrontations between workers and their employers, Congress also established the *National Labor Relations Board (NLRB)* to regulate workplace relations between businesses and their employees who sought to unionize.

Antitrust laws Laws intended to promote greater economic competition. Among the major examples in U.S. history are the *Sherman Antitrust Act of 1890* and the *Clayton Antitrust Act of 1914.*

Antitrust Laws. Congress also passed **antitrust laws** intended to promote greater economic competition. The *Sherman Antitrust Act of 1890* made it illegal for businesses to restrain trade or to monopolize a market for some product or service. The *Clayton Antitrust Act of 1914* outlawed business practices that might diminish competition or promote monopolies in a market. In 1936 the Clayton Act was amended to prevent corporate mergers that would reduce competition in a sector of the economy.

The history of antitrust enforcement[33] began in the late 1890s and early 1900s. Among the most famous historical cases were actions taken between 1905

and 1915 to break up du Pont, the American Tobacco trust, and the Standard Oil Company. More recently, antitrust actions resulted in the breakup of AT&T and the formation of the "Baby Bells" to provide phone service in various regions. Cases brought against IBM, Xerox, and other major corporations have influenced the way companies do business. In perhaps the most watched case in recent years, the Department of Justice and a number of states took action against the Microsoft Corporation in 1997. In November 1999, a federal judge ruled in favor of the government's case, and Microsoft immediately appealed the decision in hopes of having it overturned.

Criticisms of Economic Regulation. As early as the 1950s, however, critics argued that the major economic regulatory agencies seemed to be serving the interests of those they regulated rather than the public interest.[34] In addition, studies conducted in the 1960s and 1970s showed that consumers often paid a higher price for goods and services produced by a regulated industry than they would have if the industry were unregulated. The call for economic deregulation that followed eventually led to legislation in 1978 that phased out the Civil Aeronautics Board.

Under both the Carter and Reagan administrations, Congress and the commissions lowered restrictions on natural gas producers, banks, trucking companies, interstate buses, and railroads. The Securities and Exchange Commission deregulated stockbroker commissions. The Federal Communications Commission permitted ownership of television and radio stations by local newspaper companies. Agencies charged with enforcing antitrust policies (the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice) relaxed their criteria for approving corporate mergers.[35] By the early 1990s, some observers were arguing that economic deregulation had gone too far too fast. The elimination of airline and bus service to many communities, a wave of corporate buyouts and mergers, a stock market crash in 1987, the specter of a bailout for failing savings-and-loan institutions that would cost American taxpayers hundreds of billions of dollars, and other such events led some to call for reregulation. Regulatory reform, they felt, had "turned out to be an exercise in national self-deception."[36] Nevertheless, deregulation and antiregulatory policy efforts remained an important part of the U.S. public policy agenda.

Social Policies

Poor laws British laws enacted in the early 1600s that made local communities responsible for taking care of their own needy and sick. They were used as the basis for American social policies early in the nation's history.

Social welfare policies, like economic policies, have deep roots in American history. America's earliest social policies were based on England's **poor laws**—enacted in the early 1600s—which made local communities responsible for taking care of their own needy and sick. Each town was to select an overseer for the poor, who was to dispense charity to the needy and to provide able-bodied men with work. State governments became involved in aiding the needy during the 1800s. Many states abolished local debtor prisons, instituted child labor laws, mandated

public education, and supported the creation of institutions to care for the orphaned, insane, blind and deaf, epileptic, destitute, and others in need. These state and local efforts continued to expand into the twentieth century.[37]

Except for a few small federal grant-in-aid programs to the states (described in Chapter 3, on federalism and intergovernmental relations), the national government did not become actively involved in social policy until the Great Depression. The first national programs followed the tradition of state and local efforts in attempting to meet the needs of the poor or to improve their circumstances. Beginning in the 1930s, national social policy focused on promoting the general welfare through social programs for all Americans, regardless of their income level.[38] Thus, when we discuss social policy, we must address at least two types of government programs: those that provide benefits and services only to the poor and those that help meet the needs of the general public.[39]

Aiding the Poor

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 Welfare reform legislation that significantly changed the structure of government assistance to the poor.

Federal policies aimed explicitly at helping those in need went through a major overhaul in 1996 with passage of the **Personal Responsibility and Work Opportunity Reconciliation Act.** To appreciate the significance of those changes, we must understand the welfare system that the 1996 act replaced.

The Old Welfare System. Under the previous system of aiding the poor, federal welfare policies took three distinct forms:[40] *general assistance,* given in cash (such as emergency assistance) or in the form of food and other commodities or the means for buying them, such as food stamps, to those in need; *work assistance,* offering jobs or job-training programs; and *categorical assistance,* targeted at specific populations (for example, aid to families with dependent children and supplemental assistance to children with disabilities). Almost all the programs in these categories were intergovernmental programs, involving state and local funding and participation. (See Chapter 3, on federalism and intergovernmental relations.) The resulting welfare system was a complex arrangement of programs that drew criticism from all corners of the political arena. Among those criticisms, three stood out and helped shape the 1996 reforms.

First, the system was perceived as *too centralized and inflexible.* Many of the federal programs were designed to guarantee that those needing help had roughly equivalent access to minimal welfare benefits, whether they resided in New York City or Jackson, Mississippi. This goal required that the national government establish basic program standards and ensure the implementation of minimal eligibility requirements throughout the country. It did so through specific provisions attached to the categorical grants it provided to the states to carry out the various programs. While the level of benefits for different federally funded programs might vary from state to state, program standards and a minimal level of benefits were set and enforced in Washington, D.C.

Initially, many Americans accepted this centralized system as necessary in order to guarantee some minimal assistance to the poor, no matter where they lived. By the 1980s, however, critics were successfully arguing that program centralization had gone too far and was hindering state and local efforts to deal with the special circumstances and needs of local residents. Attempts to modify or adapt federal programs to local circumstances through special waivers allowed under existing law were often rejected or severely limited. Starting in 1993, the Clinton administration invited and sanctioned a great many more such waivers, but the process was unwieldy and allowable innovations were restricted by existing laws.

The second criticism of the older welfare system was that it created *too much dependence* on government programs among the poor.[41] A growing chorus of critics from both the political left and right noted that existing welfare programs gave recipients little, if any, incentive to seek employment or job-related training. Instead, the system seemed to create a culture of poverty that increased the dependence of welfare recipients on government programs. Together with changing economic conditions, welfare programs were producing a social and economic underclass that had no incentive to break out of the cycle of impoverishment.

The large and growing costs of the existing welfare system gave rise to the third criticism. The system was proving *too expensive* for a nation that was increasingly concerned about the climbing national debt. Entitlement programs—programs in which all eligible individuals had a right to the program's benefits—dominated the welfare approach, requiring open-ended funding. In other words, no matter what federal, state, and local governments might budget for these programs in any given year, they were obligated to spend as much as necessary to meet the needs of those entitled to the benefits. This obligation created uncertainty and anxiety about future expenditures—especially as projections indicated a steep rise in entitlement costs by the year 2000.

These and related criticisms of the welfare system helped to fuel reform efforts and eventually led to passage of the Personal Responsibility and Work Opportunity Reconciliation Act, which President Clinton signed into law on August 22, 1996. Another factor that spurred elected officials to action was the growing political popularity of reform. When he was running for the presidency in 1992, Clinton had promised to "end welfare as we know it." The Republican majority in the 104th Congress was also anxious to overhaul the welfare system before facing the voters in November 1996. These political pressures created the incentive for policymakers to make the most significant changes in American welfare policies in over three decades.

The New Welfare System.[42] The 1996 welfare reform legislation addressed the three major criticisms of the previous system. It gave more power to the states, focused on the goal of reducing dependence on welfare, and placed limits on government spending for welfare programs.

Empowering the states. We have already noted in Chapter 3, on federalism and intergovernmental relations, that the Personal Responsibility and Work

Changing Welfare as We Knew It

In August 1996, President Clinton signed a welfare reform act that significantly changed assistance to the poor.



Opportunity Reconciliation Act changed federalism as much as it changed the welfare system. To replace many of the highly centralized and inflexible categorical programs of the past, the 1996 reforms created a block grant titled **Temporary Assistance for Needy Families (TANF),** funded by monies that had previously been allocated to Aid to Families with Dependent Children (AFDC), emergency assistance, and work assistance programs. TANF provides each state with resources to accomplish the legislation's four basic goals: (1) assisting needy families so that children may be cared for in their own homes or in the homes of relatives; (2) ending the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) reducing the incidence of out-of-wedlock pregnancies; and (4) encouraging the formation and maintenance of two-parent families.

Temporary Assistance for Needy Families (TANF) A block grant created by the 1996 welfare reform act that replaced or changed most of the previous federal welfare system.

While giving the states considerably more power to shape their own welfare policies and programs, Congress did set some standards. To receive federal funding under TANF, states had to submit an acceptable welfare assistance plan to the national government by July 1, 1997. In that plan, each state had to demonstrate that its efforts would be equal to at least 80 percent of what it had spent on federally funded programs in fiscal year 1994. The plan also had to include provisions that would require most recipients to seek at least part-time employment after two years, as well as provisions that would end eligibility for TANF-funded programs for most recipients after five years. In addition, each state had to promise that it would hold the administrative costs of any programs funded under TANF to 15 percent or less of budget.

CRITICAL THINKING

Can we trust the states to provide sufficient assistance for the needy, or must there be a national standard for welfare programs?

Ending dependence. Instead of establishing a federal work-assistance program, TANF requires the states to develop their own assistance programs offering welfare recipients incentives and opportunities to obtain employment and get off federally funded welfare. For example, the program was structured so that by 1999 in 90 percent of two-parent families still receiving TANF-related assistance at least one adult would be gainfully employed or engaged in a job-training program.

The law also contains provisions allowing states to reduce or cut off assistance to a variety of groups. For example, the states can refuse support for teenage parents who do not participate in training or educational programs or who refuse to live in their parent's home. Anyone who refuses to help determine the paternity of children receiving aid can also lose some or all assistance. Furthermore, states can withhold additional support for children born to unwed mothers who are already on welfare. Persons convicted of drug-related felonies are not eligible for any federally funded cash or food stamp assistance under the new law, although states can aid their families if they so choose. These and other provisions of the 1996 act reflect the goal of ending welfare dependence.

Capping the costs of welfare. In funding the TANF program, Congress limited federal spending to $16.4 billion through fiscal year 2002, thus stopping the open-ended funding of the past. In addition, the law expressly states that the programs funded under TANF are not entitlements, and that both eligibility and benefits can be adjusted to keep the programs within spending limits. The law also includes some additional funding provisions for states facing special circumstances, but even this amount is set at a specific level. Individual states can, of course, spend as much as they wish on other programs, but they would have to do so without federal financial assistance. Most analysts agree that without the incentive of receiving help from Washington, most states are unlikely to provide a great deal of additional assistance to the poor. In short, the 1996 act is expected to rein in the growth of spending on welfare at all levels of government.

Supplemental Security Income (SSI) Established in 1972, this program provides monthly benefits for the aged, blind, and disabled, regardless of the level of assistance they receive from state governments.

Other provisions. While the 1996 act changed the structure of AFDC and other major entitlement programs, it did not make radical changes in some other parts of the welfare system. For example, **Supplemental Security Income (SSI)** was created in 1972 to provide direct monthly benefits from the federal government to the aged, blind, and disabled, regardless of the level of assistance they receive from other programs. Although the program was not eliminated in 1996, a major portion of it, affecting disabled children (and often used to supplement assistance to poor families), was modified to tighten eligibility requirements.

Food stamps A federal public assistance program begun in the early 1960s and run by the U.S. Department of Agriculture through which eligible persons receive stamps redeemable at participating food stores.

Another major entitlement program, **food stamps,** was also left mostly intact. Begun in 1961 as an experiment, the program slowly expanded until it became the primary source of food assistance for the poor. By 1994, more than

27 million people—about one-tenth of the U.S. population—were receiving some level of food stamp support. Since eligibility for food stamps was often tied to AFDC and other programs replaced by TANF, some parts of the program were modified. For example, to receive food stamps, able-bodied recipients must fulfill work requirements. States are also permitted to simplify the operation of the food stamp program and related programs.

In the case of both SSI and food stamps, the 1996 act initially made almost all noncitizens ineligible for either program. This particular provision of the act proved very controversial, especially in urban areas and populous states, where large numbers of political refugees and elderly legal immigrants resided. Without access to these and related federal entitlement programs, meeting the needs of poor noncitizens was likely to be a major burden for states and localities. By 1998, Congress and several states had passed legislation easing this limitation for many refugees and other legal immigrant groups.

Medicaid Established in 1965 as part of several major amendments to the Social Security Act, this program is designed to provide federal funding for specific medical services offered to qualified low-income recipients by participating states.

In the area of health care, **Medicaid** remained the primary program for aiding the poor. Established in 1965 as part of the social security system (see below), it was providing some form of assistance to over 31 million Americans by 1994. Among those receiving Medicaid, about half were children and another 25 percent were the elderly or disabled.

Although the 1996 act did not have a direct impact on Medicaid, its provisions significantly affected Medicaid eligibility, which had been automatically linked to eligibility for AFDC and other welfare programs. The 1996 act severed that automatic link, and eligibility for Medicaid was modified to maintain

Social Programs

Head Start is one of the most successful federal social programs to emerge from President Lyndon Johnson's Great Society agenda.



the entitlement based on mostly pre-TANF standards. The law also gave states the right to modify eligibility standards slightly and even to refuse Medicaid assistance to some who refused to find work. For the most part, however, Medicaid was left as a major entitlement program in America's welfare system.

Other federal programs—including housing assistance, child nutrition, and child support—were linked to programs modified by the 1996 act. Although many analysts have expressed concern about the future of social welfare policy, the long-term impact of reform on these and other programs will become clearer as the new act is fully implemented.[43] Additional changes may emerge from the George W. Bush administration. In one of his first initiatives as president, Bush established the White House Office of Faith-Based and Community Initiatives to promote the role of religious and other nonprofit organizations in the delivery of federally funded social services. As with earlier reforms, the proposal was controversial, and only time will tell what impact (if any) it will have on future social welfare policies and programs.

Meeting the Needs of the General Public

Although welfare programs for the poor have been a major part of America's social policies, many other policies have addressed the needs of all Americans, regardless of their level of income. We will focus on two types of programs: social insurance and social regulation.

Social Insurance. Many people try to save for that rainy day when they cannot count on receiving a paycheck; few, however, actually set aside enough income to deal with such crises. **Social insurance programs** are intended to cover income losses caused by long-term illness, unemployment, retirement, and other interruptions to a person's working life. Funding for these benefits comes from "contributions" (actually involuntary taxes) levied on both employers and employees and placed in special trust funds. Once a person has made a minimum number of payments into a trust fund, he or she is entitled to participate in the program's benefits.[44]

Social insurance programs Social policy programs administered by the *Social Security Administration (SSA)* that are intended to cover income losses due to long-term illnesses, unemployment, retirement, and other interruptions.

Among major industrialized nations, the United States was one of the last to adopt such a plan. Unemployment insurance and retirement benefits were established by the Social Security Act of 1935. Under social security, employees and employers contribute a certain portion of employees' earnings to several trust funds administered by the *Social Security Administration (SSA)*. The SSA is supposed to use those funds to pay unemployment claims or and to provide monthly pension checks when a worker retires. At the outset, the system assured most American workers at least minimal coverage when they were temporarily unemployed or when they retired.

Over the years, social insurance programs have grown considerably. In addition to unemployment and old-age pension insurance, social security

now applies to the disabled and to the survivors (widows, widowers, and children) of deceased contributors. The number of Americans covered by social security's general social insurance programs has expanded. In 1940 social security covered only 20 percent of the U.S. work force. By 1997, the old-age, survivors', disability, and related federal programs covered 96 percent of the American labor force. A smaller portion, approximately 90 percent, was protected by unemployment insurance.[45]

CRITICAL THINKING

Is it fair for government to support the elderly with money raised through payroll taxes on younger workers?

With the passage of Medicare in 1965, the federal government also began providing health insurance for the elderly and disabled. The basic Medicare program provided insurance for hospitalization, as well as extended care and home health services. It also contained a voluntary supplementary medical insurance program to help offset the costs of physicians' fees, lab tests, medical supplies and appliances, and related items. By 1997, 33.2 million elderly Americans were enrolled in the basic hospital insurance program, and 32.1 million paid an additional monthly premium to take part in the supplementary health insurance program. An additional 4.8 million disabled Americans under the age of sixty-five were covered under the basic program, with 4.2 million nonelderly disabled signed up for the supplemental program.[46]

Despite steady increases in the number of participants who contribute, the social insurance programs under social security—especially old-age pensions and Medicare—have faced short-term financial problems. For decades contributions to the SSA trust funds had typically equaled or exceeded the amount paid out in benefits (see Fig. 14.6), but by the early 1980s it was evident that significant problems were emerging. The American population was growing older, and policymakers had been expanding and increasing social security benefit levels for years. Critics warned of a pending crisis, but they were generally ignored until 1982, when the old-age and survivors insurance trust fund—the largest of the SSA funds—had to borrow billions of dollars from other SSA trust funds (for instance, the disability and hospital trust funds) in order to maintain a minimal level of reserves for the future.

In 1983, a National Commission on Social Security Reform, chaired by Alan Greenspan (the current chair of the Federal Reserve System), issued a report with recommendations for dealing with the immediate problems. Congress responded by raising the retirement age for eligible beneficiaries from the current sixty-five to sixty-seven by the year 2027. Those who choose to retire before the age of sixty-five will have a cut of 20 to 30 percent in their benefits.[47] In addition, policymakers have been increasing the amount that each American contributes to social security insurance. The social security tax rate for all participating employees increased from 4.8 percent in 1970 to 6.13 percent in 1980, and then to 7.65 percent in 1990. Furthermore, in 1970 only the first $7,800 of income was taxed; by 1999 the maximum taxable earnings had increased to $72,600 for old-age, survivors, and disability insurance (OASDI), with additional taxes (1.45 percent for employees) applied on all income for Medicare insurance. Employers match those payments, while self-employed individuals pay the full amount (i.e., 12.4 percent for OASDI and 2.9 percent for

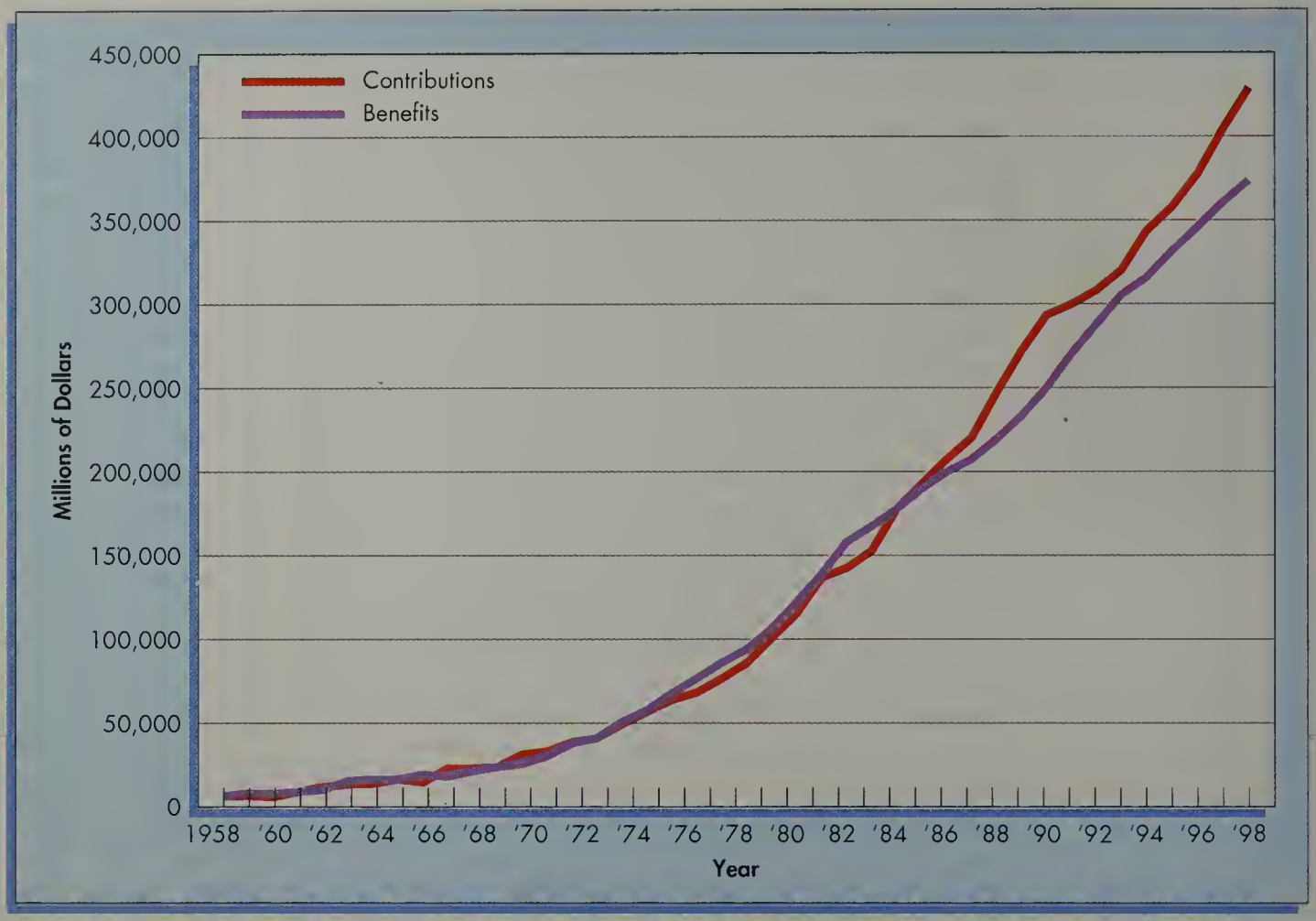


FIGURE 14.6
Social Security Contributions and Benefits

The difference between social security contributions and benefit payments created a funding crisis during the late 1970s and early 1980s, leading Congress to modify the system in an effort to enhance its long-term financial health. With these changes, contributions will stay ahead of benefit payments—at least for the short run.

Source: Social Security Administration, *Social Security Bulletin, Annual Statistical Supplement, 1999*, tb. 4.A3.

Medicare). All this is being done in an attempt to keep the program solvent as far into the future as possible.

During the early 1990s, the long-term future of Social Security became a major issue as critics pointed out that some of the Social Security trust funds were projected to run out as early as 2011. The 1983 changes, they argued, were merely short term patches, and a more significant overhaul of the system was required now if the funds were to be saved from bankruptcy as the Baby Boom generation began to reach retirement age. Led by the Concord Coalition, a group of influential citizens who had served in major government posts, the critics have called for reforms that would reduce future financial obligations while expanding the options available to those who would otherwise rely on

social security for support in their old age.[48] Defenders of the current policies point out that forecasts of trust fund bankruptcies are based on the most pessimistic assumptions about the future of the American economy—assumptions that have already been brought into question by the booming economy of the late 1990s. For these opponents of radical change, the use of more realistic assumptions shows that most of the major trust funds in the Social Security system are likely to remain solvent until well beyond 2075.[49]

Social Regulation. Protecting citizens from the major social hazards associated with life in a highly industrialized economic system has also become a policy focus.[50]

Social regulation programs Social policy programs intended to protect consumers from the hazards of life in a highly industrialized economic system.

Consumer protection policies Government laws and programs developed to deal with the safety and quality of consumer products and to protect consumers from deceptive business practices.

The first federal **social regulation programs** emerged in the early 1900s in response to problems involving adulterated food and the deceptive advertising of drugs. Stirred to action by research conducted at the Department of Agriculture and investigations by muckraking journalists, Congress passed the Pure Food and Drug Act of 1906 and the Meat Inspection Act of 1907. These and other **consumer protection policies** established federal agencies to deal with questions related to the safety and quality of food and drug products sold in the American marketplace. Over the years the laws have been modified to deal with new problems and demands. Other forms of social regulation have followed similar patterns.

Many of the economic regulatory agencies mentioned above continue to play a role in these policy areas. The Food and Drug Administration regulates a wide range of consumer products, including drugs, cosmetics, medical devices, and food (except for meat and poultry), to ensure their safety, purity, and effectiveness. For drugs and medical devices, FDA approval is needed before a product can be marketed. The FDA also investigates complaints about the safety or purity of food and cosmetics. If a product is found to be unsafe or adulterated, the FDA can order its removal from the marketplace. Overseeing the processing of meat and related products is the responsibility of the Food Safety and Inspection Service of the Department of Agriculture.

The government also looks out for the traveler and the purchaser of consumer products. The Interstate Commerce Commission has been involved in regulating passenger ground transportation industries for more than a century. Until its demise during the 1980s, the Civil Aeronautics Board regulated air passenger service. The Federal Aviation Administration continues its oversight of air traffic and safety. On the consumer side, the Federal Trade Commission (FTC) tries to keep businesses from deceiving consumers with false advertising. During Jimmy Carter's presidency, the FTC and related regulatory agencies increased their level of activity to keep business in line and protect the consumer. During the Reagan and Bush administrations, however, the activity at the FTC and other consumer protection agencies abated.[51] Under the Clinton administration, the FTC has returned to a more activist role on certain issues, especially those related to tobacco and privacy on the Internet. In most instances, however, the FTC has become more "reactive" than "proactive." As an example, when the price of gasoline at the pump skyrocketed in the Midwest in the summer of 2000, the FTC announced that it was conducting investigations to find out if it was the result of anticompetitive actions by the oil industry.

MYTHS IN POPULAR CULTURE





The West Wing: Dramatizing the Public Policy-making Process

There is a popular saying that, no matter how much you like eating sausages, you don't want to watch them being made. The American public probably feels the same way about public policy. Most of us are well aware that public policies pervade and shape our daily lives, but we seem to be averse to understanding just how those policies are made.

The image Americans have of how laws and policies are made is greatly influenced by textbooks such as this one. As you know from your reading to this point, the U.S. government is a complex organization involving literally hundreds of individuals in all three branches of the national government (Chapters 10, 11, 13), as well as thousands of others who work for federal agencies (Chapter 12) and the several millions more employed by states and localities (Chapter 3). Although the Constitution seems to set the rules for making laws and policies, the real story is extremely difficult to tell—even for those who participate in it on a day-to-day basis.

In a sense, public policymaking can be regarded as an ongoing drama (see Chapter 3, on federalism), similar in many respects to the stories we see portrayed on TV or in the movies. There are some types of government activity—for instance, law enforcement—that have been easily transformed into dramatic entertainment by the popular media. But until recently, no one in "Hollywood" was prepared to use the ongoing dramas of public policymaking as a basis for a movie or TV series. That changed in 1999, when NBC added *The West Wing* to its weekly TV fare.

The show stars Martin Sheen as President Josiah "Jed" Bartlet, a Ph.D. and Nobel laureate (in economics) from New Hampshire who won the 1998 presidential elections (remember, this is fiction!) with 48 percent of the popular vote. A descendent of one of the original signers of the Declaration of Independence, Bartlet is a Democrat who had served two terms in Congress after serving as New Hampshire's governor. Surrounding him is a cast of characters drawn from the personalities we often see in the national headlines, including a trusted chief of staff and his deputy; a director of communications (and his deputy), whose job it is to promote a positive image of the president and his administration; a political consultant; a press secretary (and her staff); the president's family (his physician wife and college-age daughter); a vice president who is regarded as a political threat to the president; members of the press corps; high-ranking military personnel; various members of Congress; lobbyists; diplomats; and an entourage who make up the White House staff closest to the president.

Like other popular TV series, *The West Wing* relies on the personal problems and interpersonal relationships of its characters to tie together the plots of various episodes. The chief of staff is an alcoholic with a past, the press secretary is "involved" with one of the White House reporters, and a key member has had a relationship with a call girl. But what was unique about the series during its first season (1999–2000) was how well it portrayed the dynamics of public policymaking on some very controversial issues.

In one episode, titled "Five Votes Down," the White House is engaged in frantic efforts to rally five votes to pass gun control legislation that the president favors. They have 72 hours before the vote. Part of the elaborate wheeling and dealing involves one member of Congress—the head of the Black Congressional Caucus—who is voting against the bill not because he opposes gun control, but because this legislation isn't strong enough. The White House chief of staff, Leo McGarry, meets privately with the congressman to plead his case, but Representative Richardson will have none of it. He

criticizes the president's team for failing to back stronger provisions supported by Richardson.

Representative Richardson: You didn't work hard enough [for a stronger bill].

Chief of Staff Leo McGarry: We did.

Richardson: What happened to the Tech DC 9 and the Tech 22? What happened to the Striker 12 and the Street Sweeper?

McGarry: We had to lose 'em.

Richardson: You never fought for 'em.

McGarry: We have to do this inch by inch. You know how this works.

Richardson: No, I know how you guys work.

McGarry: That is out of line, Congressman. Guns are number one on your list of priorities and I've never moved the president off of that.

Richardson: Keeping the White House strong is number one on your list of priorities.

In the end, Richardson will not budge, and the White House has to turn for support to those who favor a watered-down version of the law. The legislation passes, but only after the staff reluctantly seeks help from the vice president, who will take credit for the bill's passage. After winning the vote, the deputy chief of staff, Josh Lyman, visits the vice president.

Lyman: Evening, Mr. Vice President.

Vice President (VPOTUS): Josh. Nice victory. . . .

Lyman: It's a crappy law.

VPOTUS: Nah.

Lyman: No, it is. I should know. I helped write it.

VPOTUS: You did very well.

Lyman: I'd say it's roughly equivalent of fighting the war against tobacco by banning certain color matchbook covers.

VPOTUS laughing: These things take time.

Much to the delight of America's many "political junkies," who grew attached to the show during its premier season, other episodes of *The West Wing* touched on real-world issues from the death penalty and campaign finance reform to the use of sampling in the national census and funding for public broadcasting.

The West Wing is, of course, fictional entertainment. Public policymaking is not always as dramatic as portrayed in the series. Many laws are passed and policies made without much controversy and without some of the "trade-offs" and compromises that many Americans dislike. Nevertheless, by focusing on the clash of power, priorities, and interests over the most visible issues, this unique show is likely to help establish a new and more refreshing image of the complex dynamics involved in passing laws and making policies.

Sources: Information on *The West Wing* can be found at a number of web sites. The official site is located at *http://www.nbc.com/westwing/home.html*. One of the best unofficial sites, *http://www.tecweb.com/TWW/entry.html*, includes episode transcripts.

Worker protection programs Government programs that protect workers in the areas of discrimination, worker rights, and occupational safety and health.

Through **worker protection programs**, the federal government has extended its reach into the workplace as well, especially in the areas of discrimination, worker rights, and occupational safety and health. **Equal employment opportunity** programs prohibit workplace discrimination on the basis of race, sex, religion, national origin, or handicapped status. In addition, the federal government has required companies doing business with it to undertake affirmative action, aimed at improving employment and promotion opportunities for minorities, women, the handicapped, and other groups that have traditionally suffered from workplace discrimination. Although these antidiscrimination programs have been in place for nearly two decades, they remain extremely controversial and are constantly being challenged in the courts (see Chapter 4, on civil rights and civil liberties).

Equal employment opportunity Federal programs developed under civil rights legislation that prohibit workplace and other forms of discrimination on the basis of race, sex, religion, national origin, or handicapped status.

Occupational Safety and Health Administration (OSHA) The agency established to enforce legislation passed in 1970 that was intended to reduce safety and health hazards in the workplace.

The best-known occupational safety and health program was established in 1970, under the Occupational Safety and Health Act. The primary goal of this legislation was "to assure so far as possible every working man and woman in the Nation safe and healthy work conditions." The act created the **Occupational Safety and Health Administration (OSHA)** to implement this policy through regulations and on-site inspections. OSHA's regulations and enforcement programs have been controversial from the start. Many critics found its early regulations to be both trivial and costly. By 1986, however, OSHA had issued standards that would eliminate or minimize worker exposure to a variety of highly suspect materials, such as asbestos, vinyl chloride, arsenic, benzene, lead, ethylene oxide, and cotton dust. The agency also set workplace standards for construction sites, grain elevators, and chemical plants, where hazardous materials were handled. Although still subject to criticism, OSHA remains an important part of federal policies dealing with worker protection.

Besides OSHA, several other agencies are involved in workplace safety and health regulation. For example, agencies such as the Mine Health and Safety Administration and the Nuclear Regulatory Commission have jurisdiction over workplace conditions in specific industries. Overall, these agencies and programs represent a federal commitment to protecting workers from workplace hazards.

Critics of Government Interference. As we have seen with OSHA, social regulation policies have not been without their critics, who claim that current efforts are misdirected. Some accuse the government of interfering too much in the workings of the open marketplace through these regulations. They consider the laws of supply and demand to be the best means of protecting consumers and workers, and they worry about the costs of social regulatory policy. As one critic put it, "The public does not get a 'free lunch' by imposing public requirements on private industries. Although the costs of government regulation are not borne by the taxpayer directly, they do show up in higher prices of the goods and services that consumers buy."[52]

Those who support social regulations, however, complain that the rules are still too few and that they are not enforced stringently enough. Consequently, consumer advocates such as Ralph Nader and Michael Pertschuk have been calling for a revival of the consumer protection movement that achieved so much in the 1960s and 1970s. On worker protection issues, some advocates of a comprehensive industrial policy for the United States have urged legislation that would establish a higher minimum wage, protect the jobs of workers from sudden plant closings, and increase worker participation in corporate decisions.

Conclusion: The Complexity of American Public Policy

We have touched on only two of the major domestic policy arenas in which the federal government is involved today. In addition to economic and social

policies, the federal government has been extremely active in many other areas, including efforts to provide health care, support public education, construct new highways, promote the conservation of our natural resources, deal with energy shortages, and clean up and protect our environment. Although each of those policy arenas has its own distinctive characteristics, each must contend with the popular myth of government as a necessary evil. That is, policymakers must design and implement policies in a way that will show an ever-suspicious public that the benefits gained from any given government program outweigh the perceived costs in terms of lost liberty, increased dependency, and increased inefficiencies.

This is no easy task, for the reality is that the world is more complex than the necessary evil myth implies. Public policies are responses to problems we face as a society, and those problems do not *necessarily* require government's involvement. Rather, the decision to develop governmental solutions is often a choice we make through the political process. As many economists will argue, there are various nongovernmental solutions to many of our collective problems. Do we really need *public* schools to educate our children? Must we rely on government alone to provide us with trash collection or to regulate radio and television broadcasting? Do we really need government to provide us with libraries and parks and roads and hospitals? Both logically and historically, the answer is no. These various policies and services can be provided privately, either by businesses or by charitable institutions. When we decide to have government address these needs, it is by political choice rather than out of necessity.

Nor is the public solution always evil. Government actions can enhance the exercise of our liberties as well as threaten them.[53] The freedom to act in the open marketplace is made possible by the existence of a legal infrastructure that helps to maintain the rules of exchange and punishes those who commit fraud or renege on their contractual obligations. Government is also capable of delivering public goods and services without relying on heavy-handed bureaucratic methods. By adopting innovative management practices, many federal agencies have demonstrated that they can conduct the public's business in an efficient and effective way. Consider, for example, the ongoing transformation of the United States Postal Service (USPS) from a heavily subsidized bureaucracy into a businesslike enterprise that is able to compete with the likes of UPS and Federal Express for overnight delivery service. True, the USPS has a long way to go in shedding its past methods, but it has made great strides in that direction in a relatively short time.

Despite the complex reality that belies the myth of government as a necessary evil, there is some benefit to maintaining it as a limiting force in the American political system. If nothing else, it serves a useful function by keeping the public vigilant against possible abuses of government power while giving policymakers pause when they consider going "too far" in the design and implementation of public policies and programs.

Summary

1. The attitudes of Americans toward public policy have been influenced by the "government is a necessary evil" myth. This myth has deep roots in U.S. history, and has helped shape what government does and how it does it.

2. The policymaking process in the United States is difficult to summarize because so many different policies emerge from so many different institutions. However, the overall process can be described in six stages: issue identification, agenda setting, policy formulation, policy adoption, policy implementation, and policy evaluation.

3. Within each stage, the method of decision making varies. Ideally, decisions would be made rationally, but in reality decisions are often made incrementally—that is, through additions to and subtractions from current policies and programs. According to the elite model, decisions are made by a relatively small group of influential leaders who share a common perspective and common goals. Finally, many students of public policy have adopted a pluralist model, which holds that decisions are made as the result of pressures from a diverse population of interest groups.

4. In the economic policy area, the federal government has focused its attention on monetary policy, fiscal policy, economic development, and economic regulation. In each of these endeavors, the government's efforts have been shaped by the pressures created by the myth of government as a necessary evil, Nowhere is this more evident than in the debate over the national debt.

5. Social welfare policy covers government action to provide aid to low-income Americans and to promote the general welfare of all Americans. As with economic policies, each of these government undertakings has been criticized both for being too much and too little.

6. No area of American domestic public policy escapes the pressures generated by this myth. This is not necessarily bad, since policy debates and discussions invigorate the policymaking system. In addition, policies are often shaped and implemented in response to real or potential criticisms.



Net Work

Do you want to find out about the status of a particular piece of legislation that is in the news? Or how your state's U.S. senator or the U.S. representative from your district voted on a specific bill? The best place to start is the Library of Congress's "Thomas" site (**http://thomas.loc.gov/**).

If you have an interest in a particular policy area, the internet offers all sorts of options. For example, you can learn about education policy by visiting the U.S. Department of Education web site (**http://www.ed.gov/**). If you want to find out about environmental programs, visit the U.S. Environmental Protection Agency site (**httpwww.epa.gov/**).

The news media are another important source of information on various policies and programs. Some web sites specialize in collecting links to other sites that deal with specific issues. A good example is found at **http://www.intellectualcapital.com/.**

As an exercise, see what you can find out about the latest interest rate policies of the Federal Reserve's Board of Governors. You can start by going to their web site at **http://www.bog.frb.fed.us/,** but you might also want to explore various news media, such as **http://www.cnnfn.com/, http://cnbc.com/** or **http://www.bloomberg.com/.** What was the most recent decision of the Fed board concerning interest rates? What are the policy specialists saying about future policy directions? Will the Fed raise or lower interest rates over the next few months?

CHAPTER 15

Foreign and Defense Policy

- A Historic Sense of Vulnerability

1800–1914: Isolationism, Unilateralism, and Expansionism: Early approaches

1914–1960: America Emerges as World Leader: The world wars and the Cold War; containment

1960s–1980s: Containment in a Changing World: Vietnam, the collapse of the Soviet bloc

1990s: Rethinking Foreign and Defense Policies: Bush and Clinton presidencies; Shift toward economic concerns

- Making Foreign and Defense Policy

The President and the White House: Reliance on special advisers

The Bureaucracies: Various specialized agencies

The Congressional Role in Policymaking: Treaty ratification, confirmation, legislation, funding, overview

The Mass Media and Attentive Publics: Important sources of influence

The Role of Public Opinion: Mood theory

- Diplomatic Tools
- Military and Defense Strategies

Guns or Butter? Changes in the debate

Alternative Military Strategies: Old and new approaches

- Conclusion: The Reshaping of Foreign and Defense Policy

MYTH & REALITY

Is the United States still vulnerable in the post–Cold War world?

MYTH & REALITY

A hundred years from now, when students of world history read about the late twentieth century, a great deal of attention will be paid to the period from December 1988 to December 1991. On December 7, 1988, the leader of the Soviet Union, Mikhail S. Gorbachev, announced to a meeting of the United Nations that his country would unilaterally reduce its armed forces by half a million troops and withdraw and disband six tank divisions that were then stationed in East Germany, Czechoslovakia, and Hungary. Furthermore, he told the assembled leaders from around the world, his country would operate under a new military doctrine stressing defense rather than offense. Six months later, convinced that Gorbachev and the Soviet leadership were serious in their commitments, President George Bush publicly acknowledged that the Cold War was coming to an end. As confirmation of this, in November 1989 the most prominent symbol of the Cold War era—the Berlin Wall—was reduced to rubble. A little over two years later, the Soviet Union itself dissolved in the face of political turmoil that resulted from a foiled attempt by hard-liners to seize power from Gorbachev several months earlier.

The end of the Cold War was welcomed by all Americans, for it immediately reduced the anxiety that most had felt during the previous forty years as the threat of nuclear war hovered over the world stage. Policymakers around the country were looking forward to sharp cutbacks in military spending that would generate a huge budgetary "peace dividend" that could be used to solve social problems or reduce the burgeoning federal deficit. Even when it became clear that such a dividend was unlikely to materialize, there still remained the hope that in a post–Cold War world America could turn away from its forty-year

The Wall Comes Tumbling Down

For many Americans, the tearing down of the Berlin Wall in November 1989 symbolized the end of the Cold War era and the beginning of a new period in U.S. foreign policy.



reliance on power politics and pursue instead a "New World Order" based on America's most cherished values.

In the early 1990s, a belief that a New World Order was possible was not merely the fantasy of a few naive idealists. On the contrary, some of America's most influential foreign policy decision makers spoke of completely reorienting international relations. However, the reality that had emerged by the mid-1990s was somewhat different from these grand images of a new direction for American foreign policy. While no one would dispute the fact that American foreign and defense policies have changed significantly, it is also clear that the underlying theme that has guided those policies for generations has not. As we will discuss in this chapter, both before and during the Cold War American foreign and defense policies reflected a common perspective that is summarized in the *myth of American vulnerability*. According to this myth, despite what might seem like positive changes in the world situation, the United States must guard constantly against challenges to its territorial, political, and economic integrity.

"We are and have always been a nation preoccupied with security," argue James Chace and Caleb Carr.[1] For decades, this preoccupation led to an urge to achieve "absolute security" in the face of immediate and potential challenges, both real and perceived. One would assume that, with America the one remaining superpower in the post–Cold War era, Americans would feel less vulnerable and more secure. But, as we shall see, that has not been the case. Instead, both the myth of American vulnerability and the realities of the post–Cold War world have made U.S. policymakers less concerned with creating a New World Order and more focused on maintaining security and promoting America's national interests.

A Historic Sense of Vulnerability

There has always been some truth to the myth of a vulnerable America. From the outset, the new nation was subject to threats from both its British enemies and French allies. The British attack on Washington, D.C., during the War of 1812 provided substantial support for the worst fears of the American public. Those concerns have changed over the years, but they are no less important today. The nuclear age reinforced the idea of American vulnerability to military attacks.[2] The ending of the Cold War has reduced, but not completely eliminated, that fear. The threat of global terrorism has also become a major concern, as has the emergence of new forms of international crime. More important, however, has been the emergence of concerns about the economic vulnerability of the United States.

Immediately after World War II, the United States was the dominant country in the world economy outside the communist bloc nations. From the late 1940s to the early 1970s, the United States seemed invincible as an economic

power. "The American economy was truly a leading indicator of where the world economy was going," observes Michael E. Porter; and it became "the world's center of innovation."[3] The first signs of economic vulnerability began to appear in 1971, when the U.S. balance of trade figures showed that, for the first time in the twentieth century, Americans had imported more than they had exported. A second indicator emerged in 1973 and 1974, when an oil embargo by Arab nations and a subsequent quadrupling of oil prices by member nations of the Organization of Petroleum Exporting Countries (OPEC) led to increasing turmoil in the American economy. A third sign came during the mid-1980s, when the United States became the world's largest debtor nation. It was becoming increasingly obvious that American companies were losing their ability to compete effectively with the emerging economic powers such as Japan, South Korea, and West Germany. In fact, they were growing more dependent on investors from those nations.[4]

CRITICAL THINKING

How vulnerable is the United States to economic downturns in Europe and Japan today?

The new economic vulnerability was brought home dramatically on Monday, October 19, 1987, when American stock markets took a major plunge, costing investors half a trillion dollars in a single day. A former American trade official summarized the view of many other observers:

> The bell that sounded the end of the trading session on Bloody Monday 1987 signaled as clearly as any bugle call the most serious defeat the United States has ever suffered. . . . [T]he defeat was a most unusual one. There were no military weapons and no armed troops. There were casualties but no blood; tears, but no one missing in action. It was an economic rather than a military defeat, partially self-inflicted, and partially at the hands of friends and allies.[5]

Whether or not the threat to American economic interests was real, the sense of vulnerability among Americans and their policymakers has played an important role in the shaping of the country's foreign and defense policies in the post–Cold War period—just as it has throughout the nation's history.

1800–1914: Isolationism, Unilateralism, and Expansionism

Historically, Americans have always shied away from excessive involvement in world affairs. During the 1800s, policymakers followed the basic principles advocated by George Washington, who believed that the U.S. government should seek commercial relations with other countries while avoiding political alliances and maintaining a strong defense against foreign threats. These views led to the adoption of isolationism and unilateralism, which, combined with the myth of vulnerability, eventually created an atmosphere conducive to a policy of expansionism.

Isolationism A basic tenet of American policy before World War I that advocated American neutrality and avoidance of direct involvement in European affairs.

During the nineteenth century, American leaders pursued policies that deliberately isolated the United States from the intrigues and entanglements of world politics. At the time, Europe was the center of international power. Under **isolationism,** policymakers attempted to maintain American neutrality and to avoid any direct involvement in European affairs that might have dragged the new nation into commitments that would have made it politically or militarily vulnerable.

Unilateralism The pre–World War I American policy of taking action independently in foreign affairs, avoiding political or military alliances.

Monroe Doctrine An American policy, established in 1823, that warned European nations not to interfere in Latin America while promising that the United States would not interfere in European affairs.

Expansionism The pre–World War I American policy that led the United States to extend its boundaries to the Pacific while extending its influence in other areas of the world, for example, the Pacific islands, the Caribbean, and Asia.

Isolationism characterized many American foreign and defense policies until World War I. But we should not conclude that the United States did not take part in world affairs at all during the 1800s. Our nation maintained an army and navy, engaged in diplomatic relations, and even took military actions to protect its neutrality and assert its interests in the international arena. Policymakers were particularly concerned with protecting American interests in the Western Hemisphere. What characterized these actions was the second tenet of U.S. foreign policy: **unilateralism.** Under unilateralism, Americans "went it alone" in world affairs and avoided political or military alliances.

Isolationism and unilateralism were both at work in U.S. policies toward our Latin American and Caribbean neighbors. In 1823, President James Monroe announced that America would keep out of the affairs of European nations so long as those countries, in turn, did not blatantly interfere in the Western Hemisphere. However, there was nothing in the **Monroe Doctrine** to stop the United States from pursuing its own territorial expansion within that hemisphere during the 1830s and 1840s.

Expansionism emerged as the third major factor in American policies during the 1800s; the drive to expand U.S. boundaries from the Atlantic to the Pacific often influenced our conduct of foreign affairs. During that period, the United States purchased the Louisiana Territory from France, Alaska from Russia, and portions of the Southwest from Mexico. Territorial expansion also played a role in American wars with Mexico (1846–1848), with a number of Native American tribes in the West, and with Spain (1898). The Spanish-American War turned out to be an important turning point, for as part of the conflict's settlement, Spain gave the United States its first colonial possessions: Puerto Rico, Cuba, Guam, and the Philippines. Earlier agreements and actions had extended U.S. control in Alaska, Hawaii, and the Sandwich Islands in the Pacific. Furthermore, during the 1890s and early 1900s, American presidents intervened politically and militarily in Nicaragua, Panama, the Dominican Republic, Haiti, and other Central American and Caribbean nations.

To some degree, U.S. expansionism in the nineteenth century was a response to a sense of vulnerability among Americans. Efforts to extend American jurisdiction over the Great Plains and the southwestern and western territories were often justified as a means of enhancing the security of U.S. borders and reducing the influence of European powers.[6] American involvement in the Pacific and the Caribbean reflected a growing belief that without such holdings, the United States would remain both militarily and economically exposed to the imperial designs of Great Britain, Germany, Japan, and other world powers.

1914–1960: America Emerges as World Leader

Between 1914 and 1917, American policymakers faced growing pressures to enter World War I, but the isolationist pressure at home remained so strong that President Woodrow Wilson ran for re-election in 1916 using the popular slogan

"He kept us out of war!" The neutrality of the United States, however, was rooted in the belief that America should not get involved unless its own security was threatened. In 1917, publication of a secret German telegram proposing a military alliance with Mexico, combined with the sinking of ships carrying American passengers by German submarines, led President Wilson and others to conclude that the United States had to get involved in the conflict on the side of Great Britain and its allies.

With the war over, Wilson believed that the United States could no longer barricade itself behind an isolationist strategy. He was also convinced that the United States would remain vulnerable as long as there were barriers to popular rule elsewhere in the world. Thus he played a major role in writing the treaty to end the war and helped design the League of Nations and the World Court. When Wilson returned home from Paris in 1919, however, he was criticized for his internationalist policies. Although he campaigned for ratification of the peace treaty throughout the United States, isolationist attitudes remained powerful and the Senate refused to ratify it.

Isolationism persisted through the 1920s and 1930s. Many Americans blamed the Great Depression on too much contact with Europe. They believed that increasing contacts would only expose the United States to more economic turmoil. Even when the rise of militarism in Europe and the Pacific grew threatening, many Americans opposed involvement in another international war that did not seem to threaten them directly. It took the Japanese attack on the U.S. naval base at Hawaii's Pearl Harbor—for many, the ultimate proof of vulnerability—to launch the United States into that conflict.

CRITICAL THINKING

Would greater U.S. involvement in world affairs after World War I have prevented World War II?

World War II and its aftermath finally convinced many Americans that the United States had to play a major role in world affairs. The United States emerged from that war as the world's industrial and military giant. As the world entered the nuclear age, however, Americans also began to realize just how vulnerable they were to events in the international arena.

At the outset, America's leaders were hopeful about the prospects for an era of peace. The wartime alliance among the Big Three powers—the United States, Great Britain, and the Soviet Union—had been successful and seemed likely to last. The United States played a major role in creating the United Nations to promote world cooperation and peace. By 1946, however—only a year after the war had ended—the international scene had changed. The Soviet Union was tightening its political hold on Eastern Europe, North Korea, and other occupied areas. It was also challenging Britain's influence in Greece, Turkey, and the Middle East.

At first the United States tried to mediate between its two former allies, but before long it decided to openly support the British. Events came to a head in early 1947, when the British realized that they could no longer afford to meet their commitments to Greece or Turkey. Within a few weeks, President Harry S Truman had called for a policy that supported the efforts of "free peoples who are resisting attempted subjugations by armed minorities or by outside pressures." He advocated providing economic and financial aid to countries whose political and economic stability was threatened. This general policy marked the beginning of the Cold War.

Cold War The post–World War II period characterized by ideological and policy confrontations between the American-led West and the Soviet-led East.

Bipolar In the eyes of many U.S. policymakers, the state of the world during the Cold War, with nations being allied either with the United States or with the Soviet Union, the two "poles."

The **Cold War** is a term applied to the international situation between 1947 and the late 1980s, characterized by hostile, yet for the most part not violent, relations between a Western alliance led by the United States and an Eastern alliance led by the Soviet Union. During most of the Cold War era, the American public and many policymakers tended to perceive the world as **bipolar:** They saw nations as being allied with one of the two "poles" represented by the United States and the Soviet Union.

For most Americans, Cold War battles raged primarily on the level of ideology: the "democracies" of the West against the "totalitarian regimes" of the East, the capitalism of the West against the communism of the East, and so on. Sometimes the Cold War became hot and bloody, but these conflicts were typically limited in scope. The Korean War (1950–1953), for example, pitted the United States and its allies against North Korean and Chinese troops (see below). In addition, on several occasions the world held its breath as the two major powers confronted each other in crisis situations.

In 1948, for example, the U.S. and its allies challenged a ground-based blockade of Berlin by the Soviet Union by airlifting supplies into the city. The airlift was kept up until the Soviets eventually backed off eleven months later. In 1961, Soviet leaders demanded that the Allies negotiate their withdrawal from the city. President John F. Kennedy responded that the survival of West Berlin was not negotiable. The Soviets responded, in turn, by constructing a wall around the city that physically isolated it and would become a symbol of the Cold War until its destruction in 1989. Only a ground and air corridor through East Germany linked West Berlin to its base of support in West Germany. As in the case of the 1948 blockade, the Allies, led by the United States, held fast and demonstrated their resolve not to abandon their commitments to West Berlin.

Cuban missile crisis A 1962 Cold War confrontation between the United States and the U.S.S.R. involving the locating of Soviet nuclear missiles in Cuba. Often regarded as a watershed event in the history of the Cold War, it has been examined in detail as a classic case study of foreign and defense policymaking.

Perhaps the "hottest" Cold War encounter between the United States and the Soviet Union came in October 1962, when Kennedy demanded that the Soviets dismantle the offensive missile sites they had placed in Cuba and halt the shipment of additional missiles to that Caribbean island. The world stood on the brink of nuclear war for thirteen days as Kennedy and Soviet Premier Nikita Khrushchev bargained back and forth in what became known as the **Cuban missile crisis.** Kennedy ordered a blockade of Cuba, and the U.S. Navy was told to make certain that no ships carrying additional missiles sailed into Cuban ports. One ship was boarded, and other Soviet vessels turned back rather than confront the blockade. In the meantime, the American and Soviet leaders exchanged heated messages. Finally, on October 28, 1962, the crisis ended when the Soviets agreed to dismantle the missile sites in return for assurances that the United States was in the process of removing some of its missiles from Turkey and Italy.

Containment The foreign policy, pursued by the United States throughout the Cold War, that called for preventing the Soviet Union from making further expansionist moves in its effort to conquer the capitalist world.

While these specific confrontations played an important role in the Cold War, the United States followed a more general policy of containment during the period. According to proponents of **containment,** the Soviet Union was not seeking immediate victories. Instead, it was exercising patience, caution, and flexibility in pursuit of expansionist goals. Only through a policy of "long-term, patient, but firm and vigilant containment" would U.S. efforts succeed in countering the Soviet Union's unrelenting commitment to conquering the capitalist world. In that

sense, containment was a further extension of the American belief in the myth of vulnerability: Unless the Soviets were contained, they would soon extend their dominance throughout Europe, Asia, and the Americas.

Containment led to significant changes in American foreign policy. It resulted in greater U.S. expenditures for foreign aid to countries that were vulnerable to Soviet influence. It also caused a major shift in America's defense policies. In 1949 President Truman signed a treaty establishing the **North Atlantic Treaty Organization (NATO).** NATO was a response to the perceived threat of communist expansion in Europe. It closely tied American security to political conditions in Europe by guaranteeing the maintenance of Western European governments, and it committed the United States to ongoing military collaboration with the armed services of the other members of NATO. Most important, the establishment of NATO signified a break with policies of the past, formally ending a long-standing commitment of American policymakers to unilateralism during peacetime, and reflected American determination to halt communist expansion.[9]

North Atlantic Treaty Organization (NATO)
A 1949 treaty tying U.S. security interests to those of Western European and other member nations. It represented a major break in the U.S. commitment to unilateralism.

The policy of containment took on more obvious military dimensions in 1950, when President Truman ordered American forces to South Korea after that country was invaded by North Korean troops. More than 34,000 American lives were lost in that "police action," and another 103,000 U.S. personnel were wounded. Throughout the conflict, Truman maintained the limited objective of forcing the North Koreans and their Chinese allies back across the border between North and South Korea.

Under Truman's successor, Dwight D. Eisenhower, the United States avoided direct military actions while getting more involved in formal alliances with other nations. By 1960 it was committed to the defense of nations in almost every region of the world, especially those bordering on Soviet bloc states.

Eventually, however, the containment policy was tested when U.S. policymakers viewed the defense of South Vietnam as an opportunity to demonstrate America's commitments. A communist-led insurgency against an American-supported government in South Vietnam grew stronger in the late 1950s and early 1960s. Presidents Eisenhower, Kennedy, Lyndon B. Johnson, and Richard M. Nixon backed U.S. commitments with foreign aid, military assistance, and eventually American fighting forces. Between 1964 and 1973, nearly 9 million American military personnel served in Vietnam. At least 47,355 Americans died in the Vietnam conflict, and more than 300,000 were wounded. These costs proved too great for the American public, and the United States was forced to withdraw from Vietnam in 1975 as North Vietnamese troops entered South Vietnam's capital, Saigon (now called Ho Chi Minh City).[10]

1960s–1980s: Containment in a Changing World

By the early 1960s, international conditions were changing rapidly. Third World nations emerged as important actors in world affairs. Poor, less-industrialized

countries, such as India, Kenya, and Indonesia, sought aid from the industrialized world while avoiding excessive dependence on either the United States or the Soviet Union. Furthermore, both the American and the Soviet alliances experienced growing dissent. In NATO, France developed a more independent foreign and defense policy. In the East, policy disagreements between the Soviet Union and the People's Republic of China weakened that fragile alliance, as did the desire of some Eastern European countries (for example, Albania, Yugoslavia, and Romania) to conduct their own foreign policies.

Détente The relaxation of tensions between nations. It became the name for President Nixon's policy of taking a more cooperative approach in dealing with Soviet bloc nations while enhancing U.S. security arrangements with its allies.

Balance of power strategy A "realist's" approach to foreign policy, based on the need to offset any imbalance in international relations where one nation might become too powerful. Advocated by Henry Kissinger, it was the central premise of American foreign policy for most of the 1970s.

The seeming failure of the containment policy in Vietnam and the negative reaction of the American people to that war led to major changes in U.S. foreign policy—changes that shaped America's role in world affairs from 1975 until the late 1980s. Richard Nixon's administration established a policy of **détente**—or relaxation of tensions—reflecting a more cooperative approach to dealing with Soviet bloc nations, while enhancing U.S. security arrangements with its allies. It was a period of negotiations with the Soviets, bringing an end to direct American involvement in the Vietnam conflict, establishing diplomatic relations with the People's Republic of China, strengthening NATO and other alliances, and providing indirect assistance to nations threatened by communist takeovers.[11]

Behind these events was a new way of dealing with the sense of vulnerability: the **balance of power** strategy advocated and implemented by Henry A. Kissinger, who served as Nixon's top adviser on foreign policy and eventually as his secretary of state. Kissinger believed that American foreign policy in the past had been too idealistic and not cold-blooded and calculating enough. Foreign policy, Kissinger argued, was not intended to promote idealistic causes, but

The Period of Détente

President Richard Nixon used a policy of détente in his relations with the Soviet Union. Here he is pictured with Soviet Premier Leonid Brezhnev during one of several summit meetings.



CRITICAL THINKING

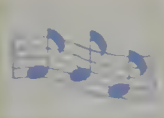
The memory of Vietnam had a great influence on the attitudes of current leaders. Does it have the same effect on your generation?

rather to protect America's national interests, and that could be done only by focusing on maintaining an international balance of power. To accomplish this meant following one principle: "No nation could be permitted to be preeminent, however fleetingly, over the combination of forces that could be arrayed against it, for in the fleeting moment of neglect independence and identity could be irrevocably lost."[12] Thus Nixon and Kissinger believed that it was necessary to take unprecedented steps in order to counter the growing strength and influence of the Soviet Union. Those steps included supporting regimes and leaders whose behavior might otherwise be seen as deplorable by many Americans. Nixon and Kissinger opened diplomatic relations with mainland China, despite a long-standing commitment not to abandon the United States' anticommunist Chinese allies based in Taiwan. Reflecting on negotiations with communist China, Kissinger argued that the "many different strands that made up American thinking on foreign policy have so far proved inhospitable to an approach based on the calculation of the national interest and relationships of power. . . . We in the Nixon Administration felt that our challenge was to educate the American people in the requirements of the balance of power."[13]

Although the balance of power approach seemed to ease the sense of American vulnerability to the perils generated by the Soviet Union and China, it could not stop the anxiety caused by the Middle East and other parts of the oil-producing world. Under the banner of the Organization of Petroleum Exporting Countries (OPEC), oil producers began raising the price and reducing the supply of crude oil during the early 1970s. By April 1973, the Nixon administration publicly declared that the United States had to take steps to reduce its vulnerability to the threat posed by the policies of OPEC and its member states. Then in October 1973 events in the Middle East elevated the situation to a foreign policy crisis. War had broken out between Israel and its Arab neighbors on October 6. In response to U.S. support for Israel, the Arab member states of OPEC unilaterally increased the price of crude oil dramatically, and on October 20 they declared an embargo on oil shipments to the West. Eventually the embargo ended, but by the end of 1973 it had significantly changed Americans' view of world affairs and U.S. foreign policy. The embargo marked the high point of an international energy crisis that brought home to Americans just how vulnerable the U.S. economy was to developments in the international arena.

The OPEC embargo was not the only embargo used in international affairs during this period. American policymakers also used that tactic when the Soviet Union invaded Afghanistan in 1979. At that time, President Jimmy Carter ended the era of détente by imposing a grain embargo. In addition, Carter canceled cultural exchange programs and withdrew U.S. teams from the 1980 Olympic Games, which were scheduled to take place in Moscow. Carter also pursued more formal relations with China, helped negotiate a peace agreement between Israel and Egypt, concluded a treaty to give Panama control over the Panama Canal, and took other actions that helped adjust U.S. foreign and defense policies to the changing international scene of the 1970s. The continuing energy crisis and

MYTHS IN POPULAR CULTURE


Americans at War—In the Movies

Karl von Clausewitz, a nineteenth century Prussian who is regarded as the most brilliant student of modern warfare, is frequently cited for his statement that war "is merely a continuation of politics."

Less often quoted is his equally powerful statement that war "is an act of violence intended to compel our opponent to fulfill our will."

These two images of war—one stressing the need for and purposes of military conflict, and the other emphasizing the brutal nature of battle—are key to understanding how American popular culture has handled the issues associated with America's use of military force.

War has played a major role in the history of American film. The very first Academy Award for Best Picture went to the 1927 production of *Wings*, a silent film set in World War I that is best remembered for aerial "dog-fight" scenes and its glorification of war. Two years later, that prestigious award was given to *All Quiet on the Western Front*, a film that focused on the darker side of war and the sacrifices solders make in the name of patriotism.

Those contradictory views of war continued to emerge on movie theater screens throughout the decades that followed, but U.S. involvement in the Vietnam War had a decidedly negative impact on how war was portrayed in American popular culture. John Wayne's 1968 movie, *The Green Berets*, was perhaps the last notable film intentionally produced as a patriotic effort to glorify war, but by the time it was released, the American public's attitude toward military conflict had taken a negative turn. Ten years later, Jane Fonda and Jon Voight won Academy Awards for their portrayals of lovers whose lives were radically altered by the Vietnam War in *Coming Home*. That same year, Oscars for Best Picture and Best Director were given for *The Deer Hunter*, a movie that more explicitly confronted the brutality and personal traumas of war. In the years that followed, movies such as Francis Ford Coppola's 1979 film *Apocalypse Now*, Oliver Stone's *Platoon* (1986), and Stanley Kubrick's *Full Metal Jacket* (1987) continued to stress the personal horrors of war—and indirectly raised questions about the wisdom of policies that put American soldiers in harm's way. After viewing those movies, one would question any decision to risk U.S. troops in any situation short of an invasion of the country.

While some of the best-known war movies of the 1970s and 1980s stressed the horrors of war and its impact on individuals, other popular films of the period focused attention on the traumas of those who returned from the war and the positive qualities of those who might be sent to war. In the first of several "Rambo" films (*First Blood*, 1982), Sylvester Stallone portrays a disoriented Vietnam veteran who goes to war with local law enforcement after they imprison him for vagrancy. That same year, Richard Gere starred in *An Officer and Gentleman*, a film that made almost no reference to war while stressing the character-building qualities of military service. Tom Cruise did some action against enemy jets in the popular 1986 film *Top Gun*, but the focus again was on the character of those we might send off to war. In 1989, Cruise played the role of a wounded Vietnam veteran who returned from war feeling betrayed by his country in Oliver Stone's *Born on the Fourth of July*.

The horrors of war reemerged in the late 1990s with the release of *A Thin Red Line* (1998) and *Saving Private Ryan* (1999). Both films focused on bloody battles of World War II. In *A Thin Red Line* it is the battle for Guadalcanal, while *Saving Private Ryan* begins with scenes designed to replicate the sights, sounds, and feel of the D-Day invasion of

Omaha Beach in 1944. But if anything is glorified in these movies, it is not the value of war against Japan or Germany. Rather, it is the character and personal sacrifice of those who put their lives on the line for their country.

The personal nature of the American war experience emerges in *Three Kings,* a 1999 movie set in the Persian Gulf War of 1991, but with a slightly different theme. Unique among recent war movies, the plot places the Americans in a hostile situation where they are free to walk away from danger, but choose instead to put their lives at risk to do what is morally right. The story unfolds after the war has been won and hostilities have ceased. Seeking to enrich themselves by seizing a hidden stash of Iraqi gold, several U.S. military personnel illegally set out for a desert town where they find the gold—as well as a "situation": Iraqi troops are attempting to quash resistance among the locals. The Americans seek nothing more than a fast exit with their loot, but the villagers, fearing that they will be killed, plead with the Americans. The brutality of the Iraqi soldiers is demonstrated when one of the most vocal villagers is shot in front of her child and husband. The Americans take a stand on behalf of the villagers, and the conflicts escalate from that point forward.

If there is a common thread emerging from these examples of today's popular culture myth of war, it is that "war is hell," but that Americans cannot turn their backs on those suffering injustices at the hands of their enemies. There is no glory in war, and the bloody and brutal nature of combat has been made increasingly visible on the cinematic screen for several decades. But there is also an emerging sense that there may be some things worth fighting for—including the lives and rights of total strangers.

For more information on the portrayal of war in movies, visit UC-Berkeley's "War and War-Era Movies" at *http://www.lib.berkeley.edu/MRC/Warfilm.html./*

events in Iran, however, had the greatest impact on the Carter administration. In 1979, Iranian revolutionaries seized the U.S. embassy in Tehran and took more than a hundred Americans hostage. This and similar terrorist actions against American citizens added to the general public feeling that America was once again vulnerable. The Iranian hostage crisis preoccupied Americans during 1980, adding to the public's sense of vulnerability in an election year. The crisis lasted more than a year, ending on the day President Ronald Reagan was sworn into office in 1981.

At the outset, the Reagan administration stressed military superiority over the Soviet Union and the need to strengthen America's leadership in the Western world. Underlying the Reagan approach was the assumption that the United States must operate from a position of strength. Anything less, administration officials believed, would make the United States susceptible to the designs of Soviet leaders. Reagan supported stepped-up military spending and increased American involvement in the Middle East, Latin America, and other international "hot spots."[14] In many respects, his policies resembled the containment policies of the Cold War, but the changing realities of world affairs eventually posed major challenges to that approach.

At the center of those challenges were changes taking place in the Soviet Union and Eastern Europe. Gorbachev's emergence as the leader of the Soviet Union in 1985 created a situation that even hard-line cold warriors in the Reagan

Iran Hostage Crisis

In the late 1970s, international crises such as the seizure of U.S. embassy personnel in Tehran increased the feeling of vulnerability among Americans.



administration could not ignore. The shift was dramatic, especially for President Reagan and the American public. In 1982 before the British House of Commons, Reagan had called the Soviet Union an "evil empire." The American people seemed to support that belief; in 1983, nearly two-thirds of those polled regarded the Soviets as a real and immediate military threat to the United States. But by 1988, Reagan was walking through Moscow's Red Square with Gorbachev, waving and shaking hands with Soviet citizens; meanwhile, the number of Americans concerned about the Soviet military threat had decreased to less than one in three.[15] Even then, few observers predicted the coming end to the Cold War.

Policymakers in the Bush administration were extremely pleased with the events that unfolded between 1988 and 1991. There were, of course, some setbacks and disappointments, such as the brutal suppression of China's student demonstrators in Beijing's Tiananmen Square in June 1989. Nevertheless, major changes were clearly in the wind. American-Soviet relations had been the pivotal feature shaping U.S. foreign policy since World War II; significant changes in those relations were bound to affect other foreign policy areas. America's NATO allies were especially eager to build on those improved relationships. This was particularly true of West Germany, where Gorbachev was popular and where there was considerable pressure for arms reduction and for reunification with East Germany. By May 1990, every Eastern European nation had new, more liberal leadership or policies. A more cooperative Soviet posture in Latin America, the Middle East, Africa, and other potential regional hot spots provided still more proof that real changes were taking place in the context in which U.S. foreign policy operated.

1990s: Rethinking Foreign and Defense Policies

Shifting Contexts. Developments started to turn sour as early as August 1990. The new governments of Eastern Europe were beginning to face the hard realities of making the transition to democracy and free-market economies. In the Soviet Union, Gorbachev became anxious about the rapid pace of the changes he had initiated and began to turn his back on the reform movement. Equally ominous was the successful Iraqi invasion of Kuwait early that month. The outlook for the post–Cold War era suddenly seemed bleaker.

In 1991, however, hope returned in several arenas. The Persian Gulf War against Iraq, launched by a U.S.-led alliance, was quickly and decisively concluded. In August, several hard-liners in the Soviet regime staged an abortive coup against Gorbachev, and by the time the dust settled in December of that year, the Soviet Union was no more. In its place were the various republics that had once made up the USSR, each seeking to establish itself as an independent actor on the international stage. Foremost among these was Russia, still a powerful force to be reckoned with. There were other positive developments: In the Middle East, a U.S. initiative on peace talks began to take hold; in South Africa, progress was being made toward ending apartheid and establishing a majority-rule regime; and in Central America, peace talks in El Salvador were being brought to a successful conclusion. But this newly regained sense of hope was now tempered by the realization that the post–Cold War era was not without its uncertainties, despite the many changes that had occurred.

Bush Strategy. It was in this context that the Bush administration began to articulate a foreign and military strategy based on new assumptions.[16] Central to these assumptions was the sense that the United States, even as the one remaining superpower, was still vulnerable to forces it could not control. Therefore, it needed to develop a strategy that would attempt to deter aggression and defend the nation's vital interests in an uncertain world.

Although not specific in content, the Bush foreign policy strategy was based on four general principles. First, it assumed that American interests would be best served if the United States had a regional focus, as opposed to a more global perspective that ignored specific regional issues. Second, it stressed strong alliances within that regional framework rather than unilateral actions. Third, building on the model of the Persian Gulf War, the Bush administration would give preference to multinational joint operations when military action was required. Finally, the Bush strategy took into account the need to maintain the U.S. capability to act alone if necessary to protect the nation's vital interests. When presenting their revised strategic plans, Bush administration officials always emphasized the uncertainties facing the United States and its vulnerability to unexpected challenges.

The myth of vulnerability also remained active in the context of several key domestic issues that had important foreign policy implications. For example, the War on Drugs, declared by President Bush, included strategies to cut off the supply of cocaine and other drugs from Latin America. Environmental concerns had international repercussions. Canada's leaders, for example, put considerable pressure on Presidents Reagan and Bush to address the problems caused by the acid rain produced by U.S. industries. Global warming was by its very nature an international issue, as was popular concern about the destruction of the Amazon rain forests by Brazil. In these and related cases, policymakers felt that their ability to deal effectively with problems was dependent on the actions of others—a situation that extended America's vulnerability in world affairs.

But it was in the area of economic policy that the greatest concerns emerged. During most of the Cold War, economics and national security were perceived as separate concerns, and when the two came into conflict, it was national defense that took priority.[17] However, in the early 1980s, economic concerns prompted President Reagan to appoint a National Commission on Industrial Competitiveness. In its 1985 report, the commission noted that the U.S. economy's "ability to compete internationally faces unprecedented challenge from abroad. Our world leadership is at stake, and so is our ability to provide for our people the standard of living and opportunity to which they aspire."[18] Although it did not receive a significant amount of public attention, the commission was expressing a theme about America's economic vulnerability that would become increasingly important over the next decade.

Clinton Presidency. A growing number of historians are beginning to see the 1992 election of Bill Clinton as an important event in the history of American foreign and defense policies. Not only was he the first chief executive elected in the post–Cold War era, but his relative youth (he was 46 when he was elected) meant he had not personally experienced the threats posed by the Great Depression, Hitler, and Stalin. With a few notable exceptions (e.g., Secretary of State Warren Christopher), Clinton surrounded himself with advisers primarily drawn from his own generation—a generation that had formed their views of foreign and defense policies during the Vietnam War era, when most of them opposed U.S. policies in Southeast Asia and elsewhere. And, like most of his advisers, Clinton regarded the domestic economy as the top priority for the new administration.[19] Thus, it was no surprise that the Clinton foreign policy team refocused the country's attention from issues of military vulnerability to those of economic security. The United States must remain an international leader, they argued, but not because of any military threat. "Today . . . the defense of the national interest requires a more subtle examination of the dangers and opportunities in a new world." To meet those new challenges, the Clinton administration gave top priority to integrating "a healthy American economy into a healthy global economy." In that context, the next foreign policy priority was "creating and expanding democratic governance and free markets overseas."

By 1994, the more traditional Cold War objectives of national security "through skilled diplomacy and a strong, ready military" were relegated to being the third item on the administration's list of priorities.[20]

CRITICAL THINKING

Has the Clinton administration put too much emphasis on the economic aspects of foreign policy?

That emphasis on economic security was most evident in Clinton's first term. Trade policies, especially the implementation of the North American Free Trade Agreement and the establishment of the World Trade Organization (see the discussion in Chapter 14, on domestic policy and policymaking), took center stage. On a more general level, the Clinton administration developed policies that would help Americans compete in the emerging **global economy,** where physical boundaries and traditional national economic controls were becoming increasingly irrelevant. The trend toward globalization presented American policymakers with a new set of challenges beyond those related to economics. The administration found itself dealing with a new set of "transnational" issues, including new forms of environmental degradation and organized criminal activity that knew no borders.[21]

Global economy A term given to the international conditions that emerged in the 1990s as a result of technological developments that made traditional economic boundaries and institutions irrelevant. Also called *globalization,* this trend has challenged national policies and exposed the United States and other countries to transnational problems.

This did not mean, however, that the Clinton administration could or would ignore the more traditional forms of military and national security vulnerability that remained even after the end of threats from the Soviets. The threat of nuclear war remained a real concern in several respects. The strategic nuclear weapons of the former Soviet Union were now owned by the republics of Russia, Kazakhstan, Ukraine, and Belarus, so that disarmament negotiations had to be conducted with several distinct states rather than with one. In addition, the potential for the spread of nuclear weapons increased when the centralized Soviet controls against proliferation disappeared. Fearing that Iraq, North Korea, and other "rogue" states might get access to Soviet weaponry or develop their own nuclear capabilities, the United States was faced with unique diplomatic challenges. It was a situation that made old regional conflicts even more significant. There were potential nuclear flashpoints emerging all over the globe, especially in the Middle East, where Israel's capability to develop nuclear weapons was an open secret, and in South Asia, where both India and Pakistan demonstrated their nuclear prowess in 1998.

The Clinton administration also found itself confronted with humanitarian issues and strategic problems raised by a number of very bloody internal conflicts. American troops found themselves conducting special missions in Haiti, Suriname, Panama, Bosnia, Kosovo, northern Iraq, and many other places where civil strife was creating humanitarian crises. An ill-fated mission to Somalia resulted in the death of 18 U.S. soldiers in 1993, reminding Americans of the risks associated with taking on these smaller missions around the world. And during his second term in office, Clinton seemed more directly engaged in diplomatic efforts, especially in the Middle East. His secretary of state during that period, Madeleine Albright, articulated a vision for U.S. foreign policy that stressed the creation of the new world order that President Bush and others had talked about when the Berlin Wall fell.[22] Nevertheless, it was the economic dimensions of foreign affairs that formed the core of the Clinton policies.

Working for Peace in the Middle East

Madeleine Albright, the first woman to hold the position of secretary of state, greets Palestinian leader Yasir Arafat before one of the many meetings on peace in the Middle East. This June 2000 session was one of many held by Albright and her predecessors in an effort to resolve the long-standing dispute between Israel and the Palestinians.



Making Foreign and Defense Policy

The end of the Cold War not only led to a major shift in the priorities of American foreign and defense policies, but also transformed the way these policies are made.

During the Cold War, there was a broad consensus that the primary objective of American foreign policy was to protect our nation and its allies from the military threats posed by the Soviet Union and its allies. Thus foreign policy was closely tied to military and defense policies—that is, national security policy. Under those conditions, foreign policy decision making was relatively centralized and isolated from the hurly-burly of politics that characterizes domestic policymaking (see Chapter 14, on domestic policy and policymaking). It was an arena dominated by the president, his national security advisers, and military experts.[23]

After the Cold War, the making of foreign policy took on many of the characteristics of domestic policymaking. Congress and a growing number of interest groups became increasingly involved, and American public opinion became more divided over specific foreign policy issues. Presidential leadership now depends more on developing policies that satisfy a wide range of constituencies, and the State and Defense Departments must work closely with other departments, cabinet offices, including those from the Treasury and Commerce, and with the Office of the U.S. Trade Representative.

The President and the White House

The president's role in foreign and military affairs is rooted in the constitutional provisions that give the president the power to make treaties, appoint ambassadors, receive diplomatic representatives from other nations, and serve as commander in chief of the armed forces (see the discussion of these roles in Chapter 11, on the presidency). Thus, although Congress shares some of the responsibility for shaping, funding, and implementing our foreign and defense policies, the lion's share of the power in these arenas traditionally and constitutionally belongs to the president of the United States.[24]

Prior to the Cold War, much of the United States' foreign policymaking was conducted by the secretary of state. With the advent of the Cold War, however, formulating and implementing foreign and defense policies became a complex affair, and the president increasingly relied on special advisers. The National Security Act of 1947 authorized the president to establish the **National Security Council (NSC),** comprising the president, the vice president, the secretaries of defense and state, and other officials that the president wished to invite, such as the secretary of commerce, the director of the Central Intelligence Agency (CIA), or the chairman of the Joint Chiefs of Staff. The NSC's primary functions were to advise the president on national security issues and to coordinate the implementation of policy. It was not intended to be a decision-making body, but its members were called on for their opinions and advice during times of crisis.

National Security Council (NSC) A council created by Congress in 1947 to advise the president on foreign policy and to coordinate its implementation.

The NSC staff also played an important role in shaping U.S. foreign and military policies. Typically, the staff consisted of experts who monitored the world situation for the White House, prepared analyses and policy options for the president's consideration, and oversaw the coordination of foreign and defense policies.

This staff was headed by the special assistant to the president for national security affairs, often called the **national security adviser.** Under some presidents, the national security adviser strongly influenced foreign and defense policies. In the Nixon administration, for instance, Henry Kissinger played a central role in negotiating agreements with the Soviets, as well as in efforts to end the Vietnam War and to open relations with the People's Republic of China. Eventually, Nixon appointed Kissinger to serve simultaneously as both national security adviser and secretary of state.

National security adviser The head of the National Security Council staff, who may sometimes have a strong influence on foreign and defense policies.

Recent national security advisers have been less well known to the general public. President Clinton, for example, appointed Anthony Lake as his adviser during his first term. Lake intentionally kept a low profile, knowing that some in Congress distrusted him. His successor, Samuel Berger, came to the job almost completely unknown outside of Washington, but he promised to be more visible and accessible than Lake. Although he did not have the visibility of Henry Kissinger, Berger made himself more available to the media than his predecessor.

As an indication of the policy shift toward economic security concerns, President Clinton quickly established a **National Economic Council (NEC).** Modeled after the NSC, the NEC was given the responsibility of coordinating and integrating U.S. foreign trade and domestic economic

National Economic Council (NEC) A council patterned after the NSC created by President Clinton to coordinate foreign and domestic economic policy matters. It is headed by the *national economic council adviser,* who is expected to facilitate coordination of relevant policy concerns.

policy. In establishing the position of national economic council adviser to coordinate NEC activities, Clinton gave that official equal status with the administration's national security adviser. In addition, several other key advisers on economic policy served on the staff of both the NSC and NEC, further supporting the idea that economic security had become a major priority in the U.S. foreign policy arena.

Department of State The cabinet department responsible for the day-to-day operation of embassies, the protection of U.S. interests abroad, formal negotiations between the United States and other nations, and the provision of advice and assistance to the president.

Foreign Service The core personnel system of the State Department, consisting of some thirty-five hundred people with expertise and training in foreign policy.

Department of Defense The agency most closely linked with military policymaking. It includes the Departments of the Army, Navy, and Air Force.

Joint Chiefs of Staff The high-ranking military officers who represent the army, navy, air force, and marines. They provide advice to the president and coordinate military actions undertaken by U.S. forces.

Central Intelligence Agency (CIA) The agency responsible for gathering and analyzing information for policymakers.

The Bureaucracies

During the Cold War, the president typically relied on several agencies outside the White House to help formulate and implement foreign and defense policies—especially the Departments of State and Defense and the Central Intelligence Agency. The post–Cold War emphasis on economic security, however, has given a number of other bureaucracies important roles in the international relations arena.

The **Department of State** is the oldest agency associated with the conduct of foreign affairs. Its personnel manage the day-to-day operations of American foreign relations. They operate American embassies, look after U.S. interests abroad, conduct formal negotiations between the United States and other nations, and provide advice and assistance to the president and other foreign policymakers. At the heart of the State Department is the **Foreign Service,** consisting of approximately thirty-five hundred people with expertise and training in diplomacy.

The **Department of Defense** (also called the Pentagon, after its five-sided office complex) is the agency most closely linked to military policymaking. Actually, it comprises three subordinate agencies—the Departments of the Navy (which includes the U.S. Marine Corps), Army, and Air Force—which are responsible for managing their respective branches of the armed services. The civilian leaders of the Defense Department strive to integrate the policies and programs of the different military branches. In those tasks they are assisted by the **Joint Chiefs of Staff,** a group of high-ranking military officers representing the navy, army, air force, and marines. The Joint Chiefs of Staff also advise the president and the National Security Council when requested.[25]

No foreign or defense policymaking can take place without information provided through intelligence-gathering agencies. These agencies obtain much of the needed information from newspapers, magazines, public documents, and other openly available material. When they need more detailed or hard-to-get information, policymakers often rely on the U.S. **Central Intelligence Agency (CIA).** With a staff of fifteen thousand at the height of the Cold War, the CIA can both gather needed intelligence and provide analyses of the data. It has also conducted covert, or secret, operations. In 1961, for example, the CIA trained and provided supplies for the anti-Castro troops who took part in the ill-fated invasion of Cuba. During the 1980s, CIA operatives helped pro-U.S. forces in Central America.

The CIA is not the only U.S. intelligence agency. In fact, it was estimated that in 1995 the CIA accounted for only 10 percent of U.S. expenditures for

National Security Agency (NSA) A highly secret intelligence-gathering agency operated by the Defense Department.

intelligence. The **National Security Agency (NSA),** a highly secretive unit located just outside Washington, D.C., uses sophisticated technologies to obtain intelligence. The Defense Department operates the NSA as well as other intelligence-gathering units to collect needed information for military purposes.

The end of the Cold War led to much discussion about reorganizing, consolidating, and refocusing intelligence-gathering functions. In its 1995 budget proposals, the Clinton administration noted that it wanted the size of the intelligence community reduced by 20 percent by 1999, and it gave priority to refocusing the attention of the various agencies to regional and economic security concerns as well as support for military operations. This was followed a year later by a congressional report urging reforms in the way the various parts of the intelligence community operated. Issues related to the purpose, size, and organization of the intelligence community continued into the new millennium.

CRITICAL THINKING

Do we still need secretive intelligence agencies like the NSA in a post–Cold War world?

Other agencies that were important during the Cold War included the *Arms Control and Disarmament Agency,* which conducted negotiations on nuclear arms limitations with the Soviets and monitored compliance with existing agreements. The *United States Information Agency (USIA)* helped coordinate educational, cultural, and media programs to provide a positive image of the United States in foreign nations. The *Agency for International Development (USAID)* helped organize economic aid programs to Third World nations and, in the post–Cold War era, to Eastern Europe and the republics that emerged from the breakup of the Soviet Union.

The end of the Cold War increased the importance of several agencies that had previously played a relatively small role in the foreign and defense policy arenas. The *Office of the U.S. Trade Representative* has taken on a pivotal role in U.S. trade policy.[26] Treated as a cabinet-level agency, the Trade Representative's office has been at the center of efforts to promote free trade through negotiated treaties. As noted in Chapter 14, on domestic policy and policymaking, two such agreements—the 1993 *North American Free Trade Agreement (NAFTA)* and the 1994 *General Agreement on Tariffs and Trade (GATT),* which created the WTO—became major domestic policy issues during the first two years of the Clinton presidency.

Similarly, due to the increased emphasis on economic security, the *Treasury Department* and the *Commerce Department* have emerged as major foreign policymaking agencies in the post–Cold War era. In recent years, top officials from both departments have spent as much time promoting U.S. trade interests overseas as they have dealing with domestic policy concerns.

The Congressional Role in Policymaking

Edward Corwin, one of this century's foremost authorities on the U.S. Constitution, described the provisions relating to foreign policy as "an invitation to struggle for the privilege of directing American foreign policy."

> What the Constitution does, and all that it does, is to confer on the President certain powers capable of affecting our foreign relations, and certain other

> powers of the same general kind on the Senate, and still other such powers on Congress; but which of these organs shall have the decisive and final voice in determining the course of the American nation is left for events to resolve.[27]

Congress can rely on several mechanisms when it seeks to influence both foreign and defense policies.[28] The Senate can affect presidential policies through its power to ratify treaties negotiated by the White House. The ratification of NAFTA and GATT turned into national debates over free trade; both treaties did ultimately obtain the required 67 votes. In 1999, the Senate failed to ratify a comprehensive nuclear test ban treaty that had been signed by most of the world's powers, but that required U.S. participation in order to be truly effective. It was the first time a treaty had failed to pass the Senate since the end of World War I. The Senate can also express its displeasure with White House policies indirectly by delaying or denying the confirmation of a presidential appointment to a high-level post in the foreign or defense policy bureaucracy or to an ambassadorship.

Both the House and the Senate can influence foreign and defense policies through direct legislation. In 1973, for example, Congress approved the War Powers Resolution Act, limiting the president's power to commit U.S. troops overseas without congressional authorization (see Chapter 11, on the presidency). The act's provisions have rarely been applied as intended, however, especially the requirement that Congress be consulted before U.S. forces are committed.[29]

Congressional control of the nation's purse strings provides an additional source of influence over foreign and defense policies. In 1974, for example, Congress passed a budget authorization bill for military assistance that included a provision urging the president to substantially reduce assistance to any government that violated "internationally recognized human rights." Over the years, similar and often stronger provisions have been included in military aid and economic assistance budget authorizations, and in 1983 Congress denied a specific Reagan administration request for aid to Guatemala, citing the oppressive policies of that nation's leaders.[30] That same year, congressional opponents of Reagan's policies toward Nicaragua imposed a $24 million limit on funding to support military efforts aimed at overthrowing that nation's government.[31]

When considering legislation or appropriations, members of Congress have an opportunity to question key foreign or defense policymakers. The secretaries of state and defense, the director of the CIA, and other agency chiefs or their assistants often appear before congressional committees and subcommittees to answer questions that can cover a broad range of policy concerns. Congress also uses its investigative power to influence foreign and defense policies. Thus in 1987 both houses of Congress established special committees to investigate the charges that members of Reagan's National Security Council staff had violated a 1985 congressional action that prohibited the U.S. government from assisting rebel forces fighting the government of Nicaragua.[32] The right to conduct these and similar investigations gives Congress leverage in shaping U.S. foreign and defense policies.

In general, however, congressional involvement in foreign and defense policies was very limited during the Cold War period. Rarely were major policy decisions debated, and when they were, the result was typically overwhelming support for the president's position.[33] In part, this was due to the constitutional preeminence of presidential powers in foreign and defense matters; but it was also a result of the nature of the Cold War itself, where the "enemy" was clearly defined and there was widespread support for the objective of containment. Analysts have been unable to predict whether the congressional tendency to defer to the White House in foreign and defense matters will endure in the post–Cold War era.

The Mass Media and Attentive Publics

The media influence foreign and defense policymaking in several ways. In their search for stories that will stir the interest of their readers and listeners (see Chapter 9, on media and politics), news reporters constantly monitor American involvement in world affairs. News reports from Vietnam, for example, greatly affected public attitudes toward that war. The lessons of Vietnam have not been lost on foreign and defense policymakers. The White House is especially sensitive to the need to gain and hold the attention of the American public on important policy matters. "You don't let the press control the agenda," noted Dick Cheney, George Bush's secretary of defense. "They like to decide what's important. But if you let them do that, they're going to trash your presidency."[34]

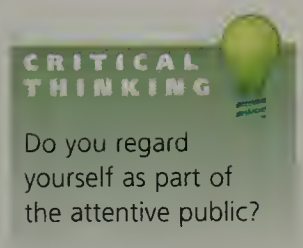
The administration's task in the area of *media management* in foreign affairs has involved three major objectives: defining events, dominating the news, and silencing critics.[35] Defining events means being able to influence the way conditions or actions are depicted in the media. Several days prior to ordering an invasion of Haiti in 1994 to reinstate that country's deposed president, President Clinton called several news reporters into his office to show them gruesome pictures of murdered critics of Haiti's current leaders. As the time for decision neared, the media were briefed by other officials on the deteriorating conditions in that Caribbean nation. Although the invasion was eventually called off after an agreement was reached with Haiti's leaders, the effort to define the conditions helped justify the sending of troops to assist in implementing the accord.[36]

Similarly, the White House's ability to dominate the news is substantial. Through news conferences, speeches, staged events, and international trips, the president can provide a sense of leadership while drawing attention to the administration's foreign policy priorities. That helps to accomplish the third goal, which is to silence critics of the president's policies. In the foreign and defense policy arenas, critics of presidential policies have rarely gotten the attention accorded to the White House. The media's attention, in short, can be focused in a way that effectively keeps the voices of critics and doubters subdued.

Most students of American foreign policy point to the 1991 Persian Gulf War against Iraq as a classic case of media management by both the White House and the Defense Department. Press coverage of the military buildup and invasion was limited and at times tightly controlled in the name of security. After the conflict, the press learned just how much it had been misled, and it reacted bitterly to being manipulated. Policymakers had learned many lessons from their experience in Vietnam. As one veteran reporter wrote, "If Vietnam was in a sense the media's war, Iraq was the military's."[37]

The main audience for most media coverage of foreign and defense policies is not the mass public, but the segments of the public that are normally more interested in and informed about relevant issues. Called **attentive publics,** these groups typically make up less than one-fifth of the American public and yet play an important role in the shaping of U.S. policies. Much of what the general public (see below) knows and thinks about foreign and defense policies comes from contacts with these attentive publics.

Attentive publics The segment of the population that is normally more interested in and better informed about relevant issues than the general public. These groups are the main audience for media coverage of foreign and defense policies.



An important characteristic of the attentive publics is that many of them join and support organizations and groups with specific positions on U.S. foreign and defense policies. Although these interest groups do not play a formal role in deciding national security policy, they are often highly influential.

The activities of interest groups in the foreign and defense policy arenas have been extremely diverse. Groups such as the influential Council on Foreign Relations have worked to increase citizen awareness of foreign and defense policy issues. Others have promoted a specific ideological perspective, such as defeating international communism or establishing a world government. Still others have advocated particular goals, such as support for the United Nations or promotion of human rights. Many more are devoted to advancing specific community or business interests. Greek American organizations, for example, have lobbied actively for U.S. policies that favor Greece and give less support to its long-time foe, Turkey. Trade associations representing almost every sector of the U.S. economy—from farmers seeking international markets for their surplus crops and automobile manufacturers seeking protection from Japanese imports to defense contractors wanting Congress to fund a new weapons system—have also frequently become involved in the foreign policymaking process. There are even lobbyists representing foreign governments that are seeking favorable policies from the White House and Congress.[38]

Over the past three decades, one of the most influential interests in the foreign policy arena has been the pro-Israel lobby. Of particular significance have been the activities of the American-Israel Public Affairs Committee (AIPAC), which has had a significant influence on U.S. policy in the Middle East. In the late 1970s, for example, efforts to shore up U.S. relations with Saudi Arabia by selling that nation armaments were subject to considerable debate in Congress because several members feared that the weapons would be used against Israel. AIPAC's access to members of Congress was enhanced by the substantial campaign contributions it had made over the years, as well as by its ability to mount major grassroots lobbying campaigns in key regions of the country. Although it

was unable to halt the arms deal with the Saudis, through its lobbying AIPAC was able to have severe restrictions placed on the conditions of the sale. Such power did not go unnoticed, of course, and in the early 1980s the Arab American community formed a group to counter AIPAC's influence—the National Association of Arab Americans (NAAA).[39]

The Role of Public Opinion

Students of public opinion often note that the general American public does not show a deep or enduring interest in foreign and defense policies. For most Americans, domestic policy concerns and personal affairs overshadow interest in world affairs. Most look to the president and other policymakers for leadership in foreign and defense matters. When it is aroused, the mass public's interest in foreign and defense policies usually focuses on some immediate threat or crisis.[40]

For example, until the Arab oil embargo of 1973, few Americans knew how heavily the United States relied on imported oil. Nor could most Americans point to Vietnam on a world map until thousands of American troops were sent there in the early 1960s. When the general public does pay attention to a national security issue, its responses are often highly volatile and based on scant information.

The volatility of public opinion poses a dilemma for policymakers. To gain public support in foreign and defense affairs, they must often oversell the challenges being faced or the need for the administration's programs. Examples abound. Presidential trips abroad and summit meetings with leaders of other nations become media events that dominate the news for weeks. Throughout the Cold War, the Pentagon issued annual reports showing the growing threat of Soviet military superiority. The dramatization of such events helps rouse the public out of its normal passivity in matters of foreign affairs and defense.[41]

Some analysts believe that the mass public's main influence on policy derives from its attitude, or "mood," regarding U.S. involvement in world affairs. According to this **mood theory,** the general public has very little direct impact on specific foreign and defense matters. But its perceived willingness to accept certain views, tactics, and programs carries considerable weight in policy decisions.[42]

Mood theory The theory that the public's main influence on policy is indirect; the public's perceived willingness to accept certain programs carries weight in policy decisions.

Historically, the public's mood has fluctuated between a willingness to accept greater U.S. involvement in world affairs and a contrary urge to withdraw from the international scene. When the public mood favors involvement, policymakers find it easier to engage in diplomacy or military ventures. When the public mood favors withdrawal, policymakers are reluctant to sign treaties, increase foreign aid, or commit U.S. troops abroad. President Carter faced such a public mood during his term in office. After the Vietnam War, most Americans were leery of new diplomatic initiatives or military ventures on foreign soil. By 1986, however, President Reagan found the American public more willing to support increasing U.S. commitments abroad. The Reagan administration

responded by calling for increased defense spending and a greater commitment in Central America.[43]

The Bush administration faced still another challenge in the shifting public mood accompanying the end of the Cold War and the growing discomfort with the United States' deteriorating position as a world economic power. In early 1991, strong public support for his actions in the Persian Gulf War gave Bush the highest ratings in public opinion polls ever achieved by a sitting president. Less than a year later, however, Bush's popularity declined as the public turned its attention to domestic problems. During the presidential campaign of 1992, conservative columnist Patrick Buchanan ran against President Bush in several Republican primaries, stressing the need for an "America first" attitude in the White House. Buchanan was trying to tap the isolationist attitudes that had once been the dominant feature of the public mood. He attracted less than one-third of the votes in those primary contests, however. His overall lack of success in that campaign (as well as in 1996[44] and 2000) reflected the fact that during the Cold War, a constant majority of Americans had come to accept active U.S. involvement in world affairs—an acceptance that they have not relinquished since the Cold War ended (see Figure 15.1).

President Clinton's focus on domestic affairs during his first two years in office was, in part, a response to greater public concern about economic problems. As he reached the midpoint of his first term, however, Clinton began to pay greater attention to international affairs. Neither the devastating defeat suffered by the Democrats in the 1994 elections nor his own re-election in 1996 seemed to reflect any clear message from the voters regarding foreign and defense policies. Nor did public opinion polls during that same period provide clear signals

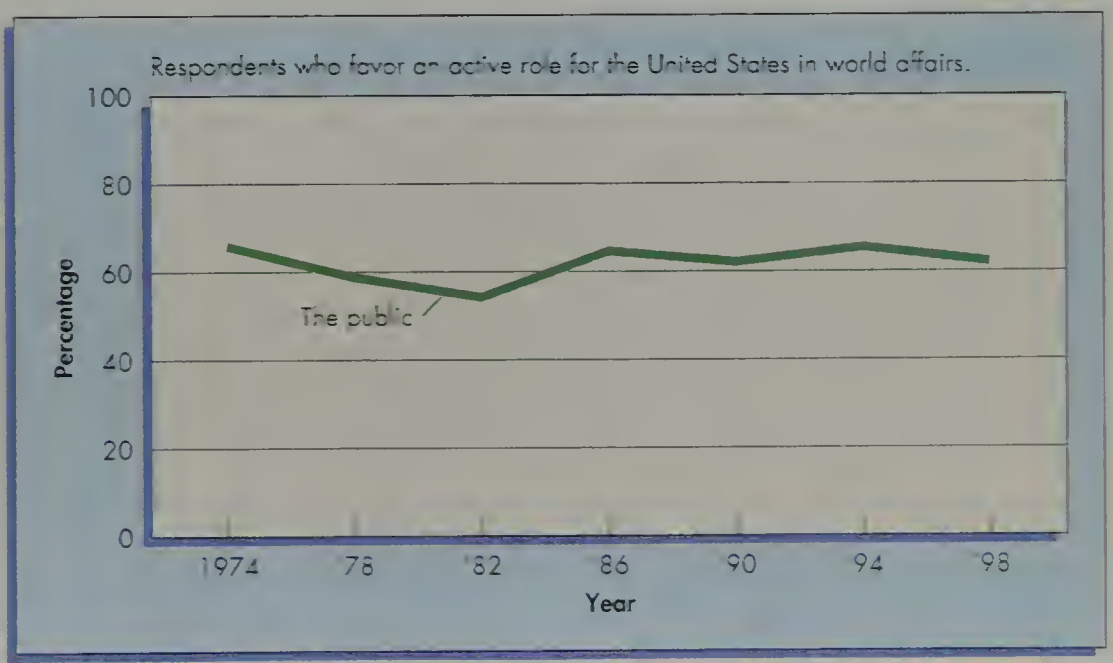


FIGURE 15.1

Preferred U.S. Role in World Affairs

Americans have consistently favored an active role for the United States in world affairs since the end of World War II. This has remained true during the post-Vietnam and post–Cold War periods as well.

Source: Data from the *CCFR: American Public Opinion Report—1999* by The Chicago Council on Foreign Relations.

about the public's mood. Yet it has become increasingly obvious to foreign and defense policymakers that mood and opinion can mean a great deal more in this post–Cold War period, in which there is no longer a "common enemy" such as the Soviet Union provided.[45]

Diplomatic Tools

Formal recognition
The act whereby the president publicly accepts and acknowledges the sovereignty and government of another nation and receives its ambassador in Washington as that country's official representative.

Like all nations, the United States uses several diplomatic tools in its relations with other countries (see Chapter 11, on the president as chief diplomat). One of the most common tools is **formal recognition** of another nation. For the United States, formal recognition means that the president publicly accepts and acknowledges the sovereignty of another nation and receives its ambassador in Washington as that country's official representative. Granting or withdrawing formal recognition is a powerful tool of foreign policy. In 1948, President Truman formally recognized the State of Israel within hours of receiving word that the new nation had been formed. Because controversy and violence accompanied Israel's birth, diplomatic recognition by the United States was critically important and helped establish a close relationship between the two countries. Similarly, as the Soviet Union collapsed in 1991, many of the emerging republics immediately sought recognition from the United States as a signal to the rest of the world of their legitimacy.

In contrast, when the United States fails to recognize a nation or breaks off formal diplomatic relations, it clearly signals its views on that country's leadership. American policymakers were often reluctant to extend recognition to communist countries even before the Cold War era. Although the Russian Revolution took place in 1917, the United States did not establish formal relations with the Soviet Union until 1933. Similarly, after a communist regime took over in China, nearly thirty years passed before the United States and the People's Republic of China agreed to exchange ambassadors.

Breaking off diplomatic relations is an extreme step in international affairs and is usually a response to some dramatic event. The United States ended its formal recognition of Cuba in 1961 when Fidel Castro seized American property without compensation and entered into a close relationship with the Soviet Union. In 1979, President Carter broke off formal ties with Iran after the American embassy was seized and its employees taken hostage.

In other cases, however, the United States has maintained formal relations with a country even if it objected to that country's policies. President Reagan, for example, did not sever American ties with the Nicaraguan government during the 1980s, even though his administration openly supported rebel groups (the *contras*) that were seeking to overthrow that nation's leadership. Reagan officials believed that by maintaining those relations, the United States was able to provide more effective public support for the Nicaraguan opposition groups, who

eventually won major elections in February 1990. Similarly, the United States maintained its relations with South Africa throughout the 1970s and 1980s, despite widespread public condemnation of that country's apartheid policies. Many members of Congress and others urged President Bush to sever diplomatic relations with China when its government violently crushed a student movement for democratic reforms in June 1989. Bush, who had once served as the American envoy to China, decided against taking such drastic measures.

Foreign aid Assistance provided by the United States to another country. This usually takes the form of a grant of money or supplies, but it can also be a low-interest loan.

Foreign aid is another major diplomatic tool. It usually takes the form of a grant of money or supplies to another nation, although it can also be a low-interest loan. The best-known example of foreign aid as a tool of U.S. foreign policy was the **Marshall Plan.** Proposed in 1947 by the then secretary of state George C. Marshall, the plan provided financial aid and low-cost loans to help the countries of Western Europe rebuild and strengthen their economies after World War II.

Marshall Plan A plan proposed in 1947 by Secretary of State George Marshall to provide financial aid and low-cost loans to help rebuild Europe after World War II.

As Third World nations emerged in the 1960s and 1970s, the United States provided an increasing amount of direct and indirect assistance for economic development. Foreign aid was also used to support and reward friendly governments that were threatened by internal rebellions or hostile neighbors. Most such aid was intended to strengthen the military capabilities of the recipient governments. President Reagan, for example, supported sending billions of dollars of military aid to El Salvador and other Central American nations as "security assistance," to help them withstand what the Reagan administration saw as the spread of Soviet influence in the region. Very little of that assistance was devoted to building schools and highways or promoting effective health care and birth control programs.[46] The withholding of aid can also prove to be an effective tool. The Reagan administration showed its displeasure with the Nicaraguan government by halting U.S. aid to that nation. Many people believe that this aid cutoff contributed to the economic problems that eventually led Nicaraguan voters to elect the opposition in 1990.

CRITICAL THINKING

As the world's leading economic power, should we use foreign aid programs to enhance our influence or to help meet humanitarian needs in poorer nations?

In the post–Cold War era, foreign aid has taken on new roles. Humanitarian aid was sent to the Kurdish people of Iraq after the Persian Gulf War and to the Ethiopian people, who suffered from both war and drought during the 1980s. The Bush administration also provided some assistance to republics emerging from the former Soviet Union as a means of supporting the move toward democracy and free-market economies in that region. When hundreds of thousands of Rwandans escaped to Zaire in 1994 following ethnic conflict that had resulted in the slaughter of thousands, the U.S. joined other nations in a major effort to provide shelter and clean water.

Treaties Legally binding pacts by which two or more nations formalize an agreement reached through negotiation.

Treaties, a third major tool of diplomacy, are legally binding pacts by which two or more nations formalize an agreement reached through negotiation. Some treaties form the basis of international or regional organizations—for example, the United Nations Charter. Others establish standards of behavior among the nations that sign them—for example, treaties such as the NAFTA and GATT agreements discussed above, which deal with trade issues, or, in the area of human rights, the treaty, which the United States signed in 1986, outlawing

genocide, or the mass murder of a group of people, such as occurred in Hitler's Germany during World War II. Other agreements address the treatment of prisoners of war and refugees. Treaties can also reflect solutions to disputes or problems arising between two or more nations. The United States and the Soviet Union signed a number of treaties after 1960 dealing with such issues as the proliferation of nuclear weapons, the use of nuclear weapons in outer space, the testing of nuclear weapons in the atmosphere, and arms limitations. The best-known use of treaties, however, relates to agreements about defense issues, such as NATO.

Covert actions
Activities—ranging from gathering intelligence to assassinating foreign leaders—that are intentionally hidden from public view and may be of questionable legality.

Covert actions—activities intentionally hidden from public view—can also have a considerable impact. Sometimes these actions are justified on the grounds that the operation could not be successfully conducted in full public view. At other times they are justified by the need to protect the lives of those involved. Nevertheless, the secrecy surrounding covert actions frequently raises questions about their legality. Covert actions range from gathering intelligence through bugging devices to paying an informant to planning the overthrow or assassination of another nation's leaders. The CIA played a major role in such activities as the 1961 Bay of Pigs invasion of Cuba, which sought to overthrow Castro; the training of a hundred thousand Laotian troops who fought in the Vietnam War; the funding of striking truckers in Chile to destabilize that country's government in the early 1970s; and the training and funding of Nicaraguan rebel forces through most of the 1980s.

Aside from the moral and legal questions, covert activities pose a difficult dilemma for American policymakers. In 1987 a special presidential commission appointed by President Reagan to study the covert actions of the National Security Council staff concluded that such operations greatly burden policymaking in a free society. Disclosure of some covert operations might jeopardize their effectiveness and embarrass government officials. Yet democratic and free societies traditionally thrive on openness and access to information.[47]

Military and Defense Strategies

During the Cold War era, American policymakers were convinced that the greatest threat posed by the Soviet Union and its allies was military in nature. They believed that communist influence could expand only through military conquest or insurgent revolutions backed by the Soviet Union or China. It is little wonder, therefore, that so much of American foreign policymakers' attention was focused on military and defense strategies.

Two issues dominated the debate about America's military expenditures throughout the Cold War period and after. One was the amount of money spent on defense, which is at the heart of the "guns-or-butter" debate—a debate

between those who believe that defense expenditures must take priority and those who think that additional funds should be spent on consumer goods and social services. The second issue is how to allocate the dollars being spent on defense.

Guns or Butter?

The key question in the guns-or-butter debate is how much of our nation's resources should go for defense. Before the Cold War, peacetime military spending in the United States remained relatively low compared with that in European nations. Our military expenditures consumed only a small portion of our economic resources—usually about 1 percent of the gross domestic product (GDP).

All that changed in the late 1940s. By 1950 the United States was a world power, and its leadership of the Western alliance made a large and costly military establishment necessary. That same year the Cold War became even more costly when the United States sent troops to help South Korea repel an attack by North Korea. The defense budget more than tripled, from $12.2 billion in 1950 to about $43 billion just five years later. During the 1960s, once the United States became actively involved in the Vietnam War, defense spending climbed to more than $80 billion and consumed nearly 9 percent of the nation's gross domestic product (GDP) (see Figure 15.2).

After American forces withdrew from Vietnam in the early 1970s, defense expenditures continued to grow, though at a slower rate. When Ronald Reagan took office in 1981, military spending had reached $157.5 billion (in real dollars), but that represented only 5.1 percent of the nation's GDP (see Figure 15.3). Within two years, however, Reagan administration policies had increased defense expenditures to nearly $209.9 billion, thus raising military expenditures to 6.1 percent of the nation's GDP. Only at the end of Reagan's term did the relative spending on defense begin to decline again.

Those who supported more spending for defense usually argued that the United States needed a strong military capability in the face of a constant Soviet military buildup. They pointed out that in 1982 the Soviet Union spent an estimated $952 per capita on its military, whereas the United States spent only $846 per capita. According to the U.S. Arms Control and Disarmament Agency, more than 15 percent of the Soviet Union's GDP was devoted to military expenditures—more than twice the figure for the United States. If we were to catch up with the Soviets on military spending, the argument ran, we must be willing to make as great an effort as they did.

During the late 1980s, Gorbachev's reforms in the Soviet Union undermined that justification, and the collapse of the Soviet regime in 1991 seemed to have eliminated that threat as a major factor in U.S. military policy. Nevertheless, advocates for maintaining high levels of U.S. defense spending pointed out that international threats remained—if not from the Soviets, then from the growing

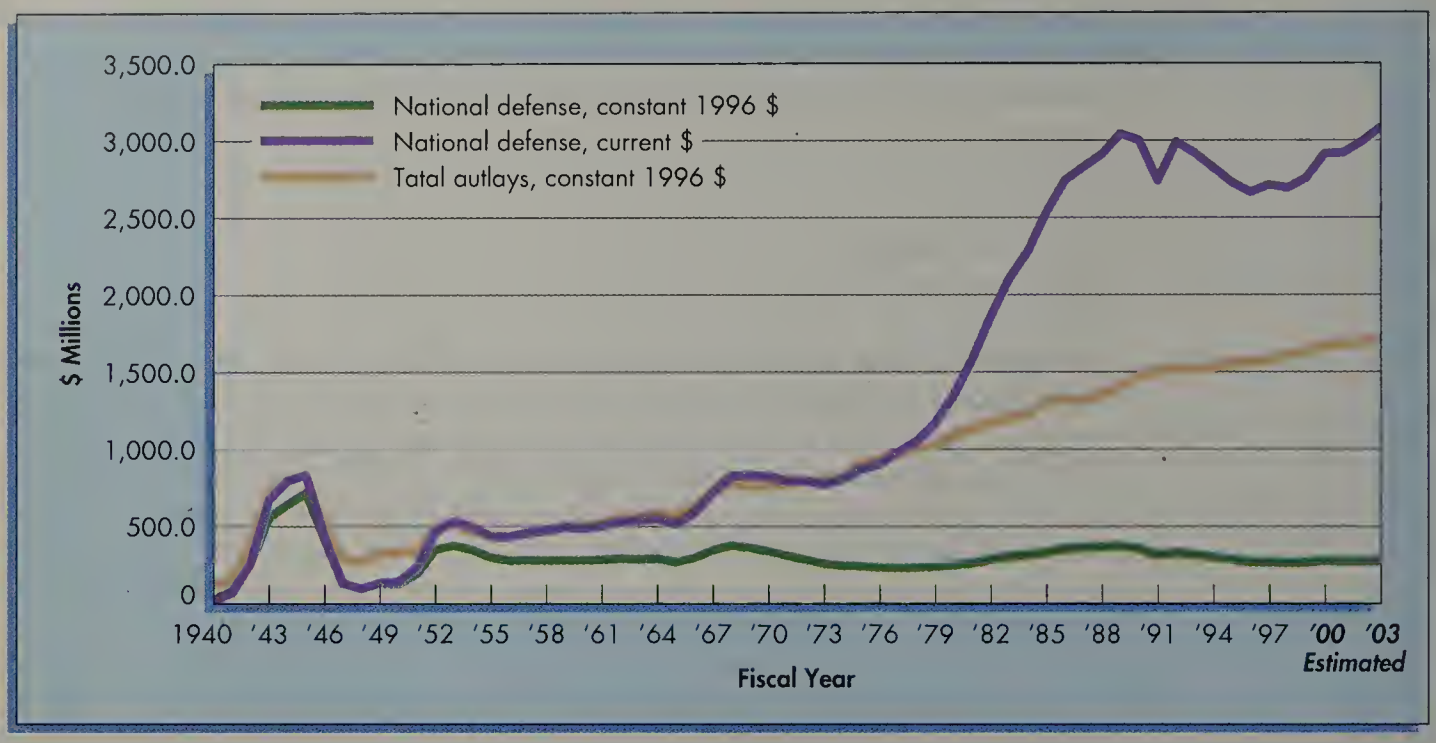


FIGURE 15.2
Spending Patterns for National Defense

Spending patterns are difficult to assess when looking only at figures in "current dollars." This figure shows the growing gap between defense and nondefense spending since at least the 1950s.

number of nuclear-armed Third World nations, international terrorists, and leaders such as Iraq's Saddam Hussein.[48] At the same time, a growing chorus of analysts and policymakers claimed that America neither needed nor could afford to spend more on defense. Even before the dramatic changes in the Soviet bloc, doubts had been raised about the need for such a large defense establishment. Opponents of defense spending pointed out that America's military strength was already quite formidable, and that the economy could benefit from cutting back on defense expenditures.

The realization that the Cold War was over initially changed the nature of the guns-and-butter debate in two ways. First, there was general agreement that less would be spent on guns. A key question, is "How much less?" The Bush administration's plans called for a 25 percent reduction in military forces between 1992 and 1997. In its budget proposal for 1998, the Clinton administration called for spending levels at least $50 million lower than the amount spent on the military in 1989, the last year of the Cold War. By 2000, however, both the Clinton administration and Congress were advocating increases in military expenditures. Citing personnel shortfalls and the need to spend more on maintenance and readiness, Clinton asked for the first major increase in spending in more than a decade. Some members of Congress were advocating even greater increases, while experts in national security affairs argued that the Pentagon would require a major infusion of funds if it was to meet the challenges of the future.

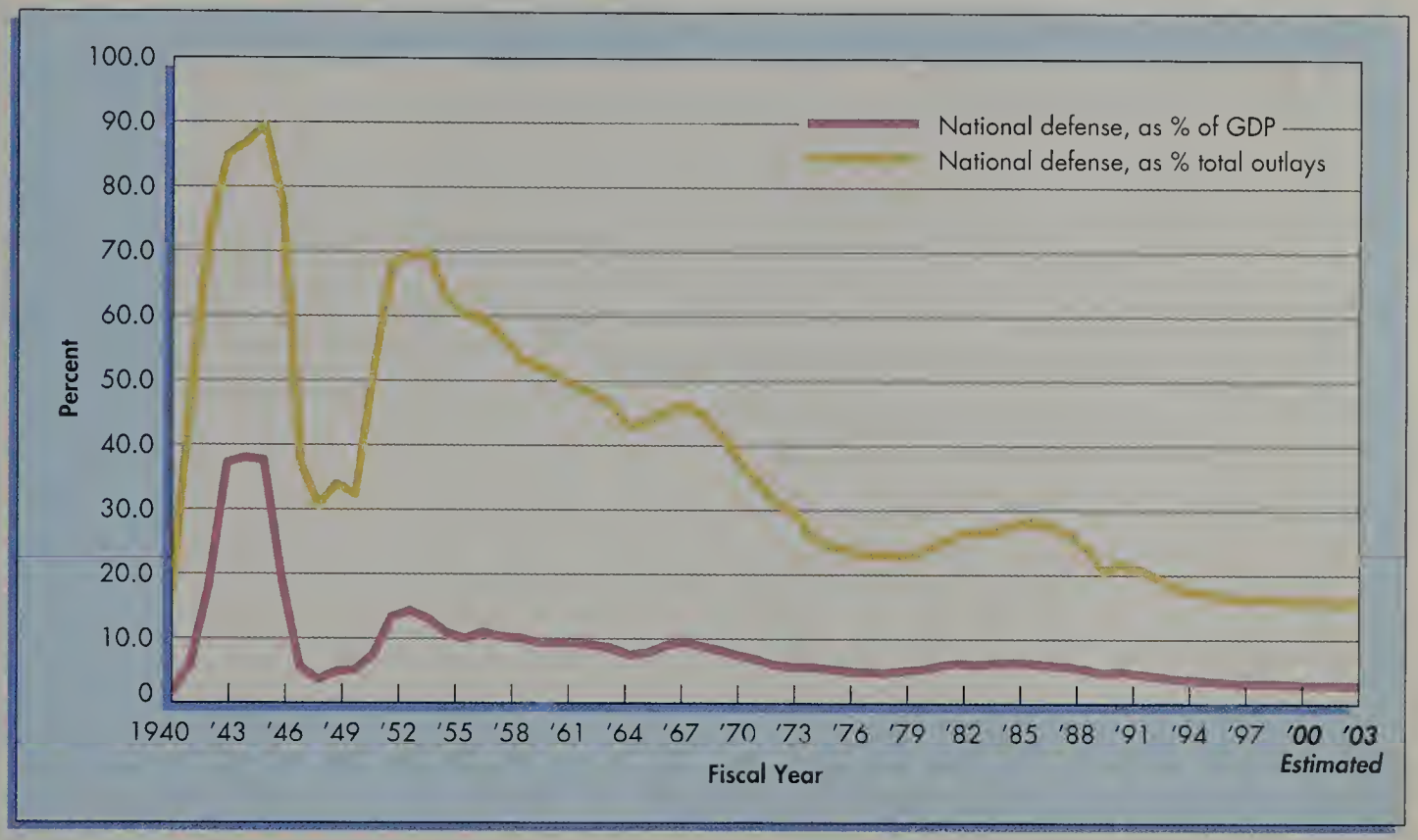


FIGURE 15.3
Relative Spending on National Defense

The pattern is even more evident when defense spending is measured as a percent of the total budget over the years. When compared to the growth in the country's gross domestic product (GDP), we see a steady decline in the amount of the nation's resources being devoted to National Defense.

A second issue revolved around what to do with the "peace dividend" generated by decreased defense spending. Should the government provide more butter—that is, should the savings on defense result in more spending on domestic programs—or should it use the dividend to reduce the deficit or federal taxes? By late 1994, however, policymakers realized that the hoped-for peace dividend was not going to materialize. That year alone, more than 110,000 troops were sent to various corners of the globe to deal with a wide range of post–Cold War missions (see Table 15.1). Rather than seek further reductions in defense spending, the Clinton administration announced that it would have to increase its projected budget requests for defense in the future. While defense spending would not revert to the levels of the Reagan years, the military would not be deprived of what it needed in order to carry out U.S. policies.[49]

The Clinton administration committed itself to a comprehensive overhaul of the way the armed services approached their jobs, calling for a "revolution in military affairs" that would focus defense expenditures on modernizing the military rather than merely maintaining it. But these efforts were criticized by George W. Bush during the 2000 presidential campaign, and one of his first

CLOSER TO HOME



When Guns Were like Butter . . .

The Cold War did more than shape American foreign and defense policy for forty years. It also shaped and sustained the economies of many states and localities through the post–World War II era. When the Soviet threat came to an end, so did the recession-free economies of many communities.

At the height of the Cold War, there were more than five hundred major military installations located in the United States. In the mid-1980s, however, the Department of Defense realized that it needed to shut down some of these facilities as part of an effort to modernize and streamline the armed services. Deciding which installations to close was not easy, especially since any rumors of base closings generated political opposition among some very powerful people who had a stake in protecting bases in their states and districts. To make the task somewhat less political, in 1988 Congress created a process by which a blue-ribbon commission, the Commission on Base Realignment and Closure (BRAC), would review proposed base closings and submit its findings to Congress. Congress had two choices: to approve or disapprove the package of recommendations from BRAC.

The first round of BRAC closures was not without controversy, but the system worked so well that it was used again in 1991, 1993, and 1995. With the Cold War over and budgetary pressures mounting, the number of military facilities closed or modified grew significantly. By the end of the 1995 round, BRAC's decisions had resulted in 548 "actions," which will eventually save U.S. taxpayers an estimated $56.7 billion.

Of those 548 actions, 97 involved the closing of military installations, and each of those closures had a potentially devastating impact on the economies of nearby cities and towns. Not surprisingly, local officials testified against the closings that would hurt them. It was estimated that 226,000 jobs would be lost as a direct consequence of the closings and that many more losses would result indirectly. Communities that were heavily dependent on military spending were bracing for the worst. At one hearing, for example, the mayor of Charleston, South Carolina, said that the planned shutdowns would be like dropping a nuclear bomb on his city.

Perhaps the end of the Cold War hit no other city as hard as it hit Long Beach, California. Between 1990 and 1994, that city lost fifty-six thousand jobs when both Long Beach Naval Station and the naval shipyard facility were closed. "We faced a crisis," said the city's mayor. In five years Long Beach had lost $1.7 billion in wages and contracts—and an estimated $4 billion in local economic activity.

But by 1997, the Long Beach economy was making an impressive comeback. Supported by nearly $3.5 billion in public and private investment, Long Beach has redeveloped itself into a tourist and shopping center for the region. It is estimated that the revitalized local economy will generate eighty-five thousand new jobs to replace those lost in the closings—an increase of more than twenty-five thousand positions. The key to the turnaround was an aggressive economic development campaign that focused on positive strategies for growth.

Not all communities were as lucky. Studies indicate that rural communities have had less success in replacing the economic losses from the base closures. Also, those cities that did not develop a proactive and unified economic growth strategy or that spent most of their efforts fighting the closings have not bounced back with the vigor of Long Beach.

Despite its success in becoming less dependent on defense spending, Long Beach faced a crisis in April 1997, which reminded its leaders that their

city's economy would always be affected by international developments and national security concerns. As part of a plan to make more efficient use of the abandoned military base and shipyard, the Long Beach Harbor Commission had approved the construction of a $200 million cargo facility, which was to be leased to the China Ocean Shipping Company—a company owned by the Chinese government. The proposal met stiff opposition from a variety of sources, including several members of Congress, who thought the sale would let an enemy power establish a communist beachhead on American shores. The opponents successfully got a court order to halt the project, and the political haggling continued. Finally, in 1998 Congress passed an amendment to the defense budget that prohibited the lease.

See James Kitfield, "Baseless Concerns," *National Journal*, 29, No. 15 (April 12, 1997), 703–705.

initiatives upon entering the White House was to boost military spending, especially for pay increases and improvements in health benefits and military housing. Thus, for both administrations the issue was no longer whether the U.S. would choose butter over guns. Rather, the focus was on how to use the money spent on guns more effectively.

TABLE 15.1

Military Actions in a Post–Cold War Year, 1994

The post–Cold War period has not necessarily meant little action for the military. In 1994, 118,892 American troops were sent to undertake or join in various operations.

Operation	Place	Troops	Purpose
Deny Flight	Bosnia	8,679	No-fly zone enforcement
Distant Haven	Suriname	496	Refugee care
Korea	South Korea	1,150	Crisis response
Marine Intercept	Iraq	8,000	Enforcing sanctions
Provide Comfort	Northern Iraq	1,400	Humanitarian assistance
Provide Promise	Bosnia	725	Humanitarian assistance
Safe Haven	Panama	3,525	Refugee care
Sea Signal	Haiti and Cuba	7,705	Refugee care
Sharp Guard	Adriatic Sea	2,531	Enforcing sanctions
Southern Watch	Southern Iraq	14,000	No-fly zone enforcement
Support Hope	Rwanda	2,364	Humanitarian assistance
UNOSOM II	Somalia	2,000	Peace enforcement
UNPROFOR	Croatia-Macedonia	897	Peacekeeping
Uphold Democracy	Haiti	32,761	Intervention
Vigilant Warrior	Southern Iraq	28,952	Crisis response
Wild Fire	Western U.S.	3,707	Disaster relief

Source: Adapted from table "The Faraway Places That Draw U.S. Troops" in David C. Morrison, "Republicans at War with Peacekeeping," *National Journal*, March 11, 1995, p. 616. Used with permission.

Alternative Military Strategies

Deterrence strategy The buildup and maintenance of nuclear and conventional forces and large stockpiles of weapons to discourage any potential enemy from attacking the United States or its allies.

Massive retaliation The military strategy favored by the United States during the 1950s, which involved warning the Soviet Union and its allies that any military confrontation could produce an annihilating nuclear attack on Moscow and other Soviet cities.

Given the realization that the post–Cold War world would still require a militarily prepared United States, the issue of how to allocate defense expenditures remains an important one. Throughout most of the Cold War era, the debate over how to allocate defense spending focused on what mix of nuclear and conventional forces would best meet the challenge posed by the Soviet Union. As difficult as that debate was, it relied on a consensus that the primary objective of military strategy was the containment of the Soviet threat. Today that consensus is gone, and the debate is more difficult.

The first and only use of nuclear weapons in time of war occurred in 1945, when the United States dropped atomic bombs on the Japanese cities of Hiroshima and Nagasaki. Nevertheless, the new weapon changed the nature of war and military strategy. A special report prepared in 1950 by the National Security Council staff underscored that change. It argued for a **deterrence strategy** based on the buildup of nuclear and conventional (nonnuclear) forces, so that any potential enemy would hesitate to attack the United States or its allies.

At first the council's appeal for a strategy based on both nuclear and conventional forces was ignored. During the 1950s, the principal defense strategy emphasized nuclear weapons. Called **massive retaliation,** this strategy entailed stockpiling nuclear weapons and warning the Soviet Union and its allies that any aggression against the United States or its allies could result in the destruction of Moscow and other major cities. However, the enormous buildup of the Soviet nuclear arsenal during the 1950s and 1960s focused attention on the dangers of massive retaliation as a policy. Given the development of intercontinental ballistic missiles (ICBMs), multiple independently targeted re-entry vehicles (MIRVs), and other delivery technology, the Soviet Union could also devastate American cities. A new strategy emerged based on **mutual assured destruction (MAD):** Each of the nuclear powers would hold the other in check by maintaining the ability to annihilate the other in any major confrontation.

Mutual assured destruction (MAD) The strategy that evolved in the 1960s whereby each of the nuclear powers would hold the other in check by maintaining the ability to annihilate the other in any major nuclear confrontation.

Flexible response The military strategy adopted by the United States during the 1960s that shifted emphasis from solely nuclear weapons to increasing the United States' ability to engage in limited, conventional wars in order to make deterrence more credible.

Massive retaliation and its MAD variant were very risky and controversial strategies. In spending so much on nuclear weapons, the policymakers had let conventional forces deteriorate. By 1960, many felt that the United States had lost its capacity to respond effectively to small, localized conflicts. Thus, during the 1960s, the emphasis shifted to a strategy of **flexible response,** which called for the buildup of America's nonnuclear, limited-war capabilities. Advocates of this strategy believed that strengthened conventional troops would make deterrence more credible, for the United States could counter enemy aggression with the right amount of force.

Throughout the 1970s, American policymakers stressed the need for keeping our nuclear weapons force at a level roughly equivalent to the Soviet force. In other words, nuclear equality, rather than nuclear superiority, would suffice. We would be safe—that is, invulnerable—if our enemies knew that we could retaliate effectively if we were attacked. As for nonnuclear forces, during the

1970s the U.S. defense strategy shifted to improving conventional weapons systems and training all-volunteer armed forces. Most military leaders, however, were reluctant to have American forces engaged in any type of long-term, land-based operation that might lead to the kind of war we fought in Vietnam.[50]

During the 1980s, the United States concentrated on strengthening both its nuclear and its nonnuclear forces. On the nuclear side, President Reagan called for maintaining a weapons force to provide a margin of safety over the Soviets. The Reagan administration also sought more spending on new, more sophisticated nonnuclear weapons. But it was the *Strategic Defense Initiative (SDI)* that drew most of the attention during the latter part of the Reagan years. Also termed "Star Wars," it was a proposed $90 billion space-based weapons system that would render nuclear threats "impotent and obsolete."[51] It came the closest to reflecting the urge for absolute security embodied in the myth of vulnerability.

In the post–Cold War era, attention focused on the development of a "balanced" approach that would allow the United States to deter aggression and protect the nation's "vital interests in an uncertain world."[52] In April 1992, the Joint Chiefs of Staff put forward four themes as the basis for future military policy. First, the post–Cold War strategy would retain a *strategic deterrence* component. That would involve maintaining a combination of nuclear and conventional forces, although at significantly reduced levels. A second feature of the new strategy would be the retention of an American *forward presence* in key locations around the world, such as Europe and the Pacific. Third, the number of Americans stationed overseas would be reduced, but the reduction would be offset by a *crisis response* strategy that would call for U.S.-based forces to be ready to react to international situations as needed. Finally, the post–Cold War strategy included plans for the *reconstitution* of deactivated forces in a relatively short time if needed, which would be accomplished by maintaining some reserve units, as well as "cadre divisions" composed of military officers ready to recreate and reequip entire military units.

While accepting the general principles outlined in those four themes, the Clinton administration developed an approach calling for a military capacity to deal with both peacetime operations and major military confrontations. On the one hand. the military must be ready to engage in a full range of small-scale unilateral and joint military operations, including "show-of-force operations, interventions, limited strikes, noncombatant evacuation operations, no-fly zone enforcement, peace enforcement, maritime sanctions enforcement, counterterrorism operations, peacekeeping, humanitarian assistance, and disaster relief." On the other hand, it must maintain a capacity to fight and win "two nearly simultaneous major regional conflicts" anywhere in the world. There is no grand strategy involved in this approach, perhaps reflecting the absence of a clearly defined enemy or overarching military objective such as winning a war. Thus, while our sense of military vulnerability remains, we are not quite sure where it might come from or when. Our goal seems to be one of maintaining our armed forces in a state of readiness just in case.[53]

The World's Peacekeepers

The end of the Cold War has not meant an end to the U.S. military's role overseas. Pictured is a Marine squad patrolling the streets of Zegra, Kosovo, in June 1999.



Conclusion: The Reshaping of Foreign and Defense Policy

American foreign and defense policies have undergone many periods of change, reflecting the many changes that have taken place in the world arena. The intrigues of European politics played a central role in shaping U.S. foreign and defense policies during the 1800s. Pressures created by European imperialism and America's own urge to extend and protect its economic influence helped mold those policies at the turn of the last century. World wars and shifting international power helped define U.S. international activity until the middle of the twentieth century, and the mantle of leadership passed to American presidents during the Cold War. Throughout the history of the nation, however, there has been a constant urge to protect the country from the dangers of political, military, and economic vulnerability.

Current changes in the international arena are reshaping U.S. foreign and defense policies. A great deal has already changed. Nevertheless, the myth of vulnerability remains a powerful factor guiding America's policymakers. The consequences of attachment to the myth can be both positive and negative. On the positive side, the myth creates a sense of caution that can result in more thoughtful decisions. On the negative side, the danger is that the urge for absolute security will distort the perspectives and choices of America's policymakers.

Summary

1. American foreign and defense policies have been influenced by a myth of vulnerability and a resulting urge to minimize insecurity.

2. Initially, American policies were guided by principles of isolationism and unilateralism established by George Washington and other early presidents. Combined with a sense of vulnerability, these principles led to American expansionist policies during the 1800s.

3. Although U.S. involvement in world affairs increased significantly from the 1890s through the 1930s, not until World War II did American policymakers and the American people accept the nation's role as an international leader. After World War II, U.S. international involvement continued—but in response to the perceived threat of Soviet expansionism. That involvement took the form of a policy of containment. The Cold War put an end to unilateralism, and the United States entered into formal alliances with the nations of Western Europe to form NATO. Other alliances followed.

4. In more recent years, the United States has adapted its foreign and defense policies to changes in world affairs. Among the most important changes have been the emergence of Third World nations and an end to the bipolar world situation as countries such as France and the People's Republic of China broke from their respective alliances.

5. Most recently, the collapse of the Soviet Union has had a significant impact on the conduct of foreign policy under the Bush and Clinton administrations. One major transformation has been the greater emphasis now placed on economic security as a primary goal of U.S. foreign policy.

6. The making of U.S. foreign and defense policies involves a distinct set of policymaking institutions, although many factors help determine decisions in each arena. During the Cold War era, the crucial decision makers in foreign and defense matters were part of an inner circle centered in the White House. However, the moods and attitudes of the general public also influenced the decisions made in both arenas. In the post–Cold War era, the nature of foreign and defense policymaking has been changing, with a greater role for both Congress and the public.

7. U.S. policymakers have a variety of foreign policy tools at their disposal. These include formal recognition, foreign aid, treaties, and covert actions.

8. Two issues have marked American defense policies since the start of the Cold War: how much money to spend on defense and which defensive strategies to rely on. The end of the Cold War has not closed that debate, but rather has changed the nature of the issues and questions being raised.

9. Despite recent changes in world affairs, the myth of vulnerability remains a powerful force in shaping America's foreign and defense policies.



Net Work

In the days before the Internet, the general public had to rely on the reporters who attended daily briefings at the State and Defense Departments for information about U.S. involvement in world affairs. Today, anyone with access to the World Wide Web can not only download material from those briefings, but also access an almost unlimited amount of additional on-line resources and perspectives. Using your web-searching skills, find the sites that provide you with this access to policy-relevant information.

Do you want to know more about a particular country or foreign policy issue that you are curious about and start to explore the possibilities. Here are some potential starting points.

- If you are interested in a specific country, begin by visiting the Central Intelligence Agency's World Factbook web site at **http://www.cia.gov/cia/publications/factbook/index.html.**
- If you want to find out about a current U.S. foreign policy topic, start at the U.S. State Department's policy web site **(http://www.state.gov/www/policy.html).**

U.S. military forces are stationed all over the world. Some of those forces have established web sites to help families stay in touch and to provide information to anyone who might be curious about the mission or status of the operation. You can start your search for these web sites at the U.S. Defense Department's information web site, **http://www.defenselink.mil/.**

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Appendixes

The Declaration of Independence in Congress, July 4, 1776

The Constitution of the United States of America

Federalist No. 10 1787

Federalist No. 51 1788

Presidents of the United States

The Declaration of Independence in Congress July 4, 1776

The unanimous declaration of the thirteen United States of America

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness: that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws, the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature, a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasions from without and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws, giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas, to be tried for pretended offenses;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies;

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments;

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection and waging war against us.

He has plundered our seas, ravaged our coasts, burned our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in our attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, FREE AND INDEPENDENT STATES; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK
and fifty-five others

The Constitution of the United States of America*

Preamble

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I

Section 1 All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

Section 2 The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, *which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years and excluding Indians not taxed, three-fifths of all other persons.* The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; *and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.*

When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Section 3 The Senate of the United States shall be composed of two Senators from each State, *chosen by the legislature thereof,* for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second

*Passages no longer in effect are printed in italic type.

year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; *and if vacancies happen by resignation or otherwise during the recess of the legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.*

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President *pro tempore,* in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4 The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, *and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.*

Section 5 Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section 6 The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the treasury of the United States. They shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Section 7 All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not

he shall return it with objections to that house in which it originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevents its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8 The Congress shall have power

To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9 *The migration or importation of such persons as any of the States now existing shall think proper to admit*

shall not be prohibited by the Congress prior to the year 1808; but a tax or duty may be imposed on such importation, not exceeding $10 for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10 No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II

Section 1 The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list said house shall in like manner choose the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should

remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.

The Congress may determine the time of choosing the electors and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural-born citizen, *or a citizen of the United States at the time of the adoption of this Constitution,* shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In cases of the removal of the President from office or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of the President of the United States, and will to the best of my ability preserve, protect and defend the Constitution of the United States."

Section 2 The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3 He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4 The President, Vice-President and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article III

Section 1 The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Section 2 The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; *between a State and citizens of another State;* between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section 3 Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attained.

Article IV

Section 1 Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2 The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3 New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Section 4 The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

Article V

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of

three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; *provided that no amendments which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article;* and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

Article VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Article VII

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention by the unanimous consent of the States present, the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven and of the Independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON
and thirty-eight others

*Amendments to the Constitution**

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

Amendment III

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

*The first ten amendments (the Bill of Rights) were adopted in 1791.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XI *[Adopted 1798]*

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

Amendment XII *[Adopted 1804]*

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of

Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, *before the fourth day of March next following*, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XIII *[Adopted 1865]*

Section 1 Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2 Congress shall have the power to enforce this article by appropriate legislation.

Amendment XIV *[Adopted 1868]*

Section 1 All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2 Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being *twenty-one* years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such *male* citizens shall bear to the whole number of *male* citizens *twenty-one* years of age in such State.

Section 3 No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. Congress may, by a vote of two-thirds of each house, remove such disability.

Section 4 The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss of emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5 The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV *[Adopted 1870]*

Section 1 The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2 The Congress shall have power to enforce this article by appropriate legislation.

Amendment XVI *[Adopted 1913]*

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Amendment XVII *[Adopted 1913]*

Section 1 The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors [voters] in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

Section 2 When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, that the Legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the Legislature may direct.

Section 3 This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII *[Adopted 1919, repealed 1933]*

Section 1 *After one year from the ratification of this article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof, for beverage purposes, is hereby prohibited.*

Section 2 *The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.*

Section 3 *This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided by the Constitution, within seven years from the date of the submission thereof to the States by the Congress.*

Amendment XIX *[Adopted 1920]*

Section 1 The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Section 2 The Congress shall have power to enforce this article by appropriate legislation.

Amendment XX *[Adopted 1933]*

Section 1 The terms of the President and Vice-President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2 The Congress shall assemble at least once in every year, and such meetings shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day.

Section 3 If, at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice-President-elect shall

become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice-President-elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President-elect nor a Vice-President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such persons shall act accordingly until a President or Vice-President shall have qualified.

Section 4 The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice-President whenever the right of choice shall have devolved upon them.

Section 5 Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6 This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI *[Adopted 1933]*

Section 1 The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2 The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3 This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of submission thereof to the States by the Congress.

Amendment XXII *[Adopted 1951]*

Section 1 No person shall be elected to the office of President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2 This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

Amendment XXIII *[Adopted 1961]*

Section 1 The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice-President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered for the purposes of the election of President and Vice-President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2 The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XXIV *[Adopted 1964]*

Section 1 The right of citizens of the United States to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2 The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XXV *[Adopted 1967]*

Section 1 In case of the removal of the President from office or of his death or resignation, the Vice-President shall become President.

Section 2 Whenever there is a vacancy in the office of the Vice-President, the President shall nominate a Vice-President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3 Whenever the President transmits to the President *pro tempore* of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice-President as Acting President.

Section 4 Whenever the Vice-President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President *pro tempore* of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President *pro tempore* of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice-President and a majority of either the principal officers of the executive department[s] or of such other body as Congress may by law provide, transmit within four days to the President *pro tempore* of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice-President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI *[Adopted 1971]*

Section 1 The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2 The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXVII *[Adopted 1992]*

No law, varying the compensation for the services of the senators and representatives shall take effect, until an election of representatives shall have intervened.

Federalist No. 10, 1787

To the People of the State of New York: Among the numerous advantages promised by a well-constructed union,

none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments, never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favourite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable; that the public good is disregarded in the conflicts of rival parties; and that measures are too often decided, not according to the rules of justice, and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously we may wish that these complaints had no foundation, the evidence of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labour have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice, with which a factious spirit has tainted our public administrations.

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: The one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: The one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said, than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable, as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to an uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for preeminence

and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other, than to cooperate for their common good. So strong is this propensity of mankind, to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions, has been the various and unequal distribution of property. Those who hold, and those who are without property, have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of the party and faction in the necessary and ordinary operations of the government.

No man is allowed to be a judge in his own cause, because his interest will certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay, with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the right of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators, but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side, and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction, must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? Are questions which would be differently decided by the landed and the manufacturing classes; and probably by neither with a sole regard to justice and the public good. The apportionment of taxes, on the various descriptions of property, is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act, in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling, with which they overburden the inferior number, is a shilling saved to their own pockets.

It is in vain to say, that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm: nor, in many cases, can such an adjustment be made at all, without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another, or the good of the whole.

The inference to which we are brought is, that the causes of faction cannot be removed; and that relief is only to be sought in the means of controlling its effects.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views, by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest, both the public good and the rights of other citizens. To secure the public good, and private rights, against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add, that it is the great desideratum, by which alone this form of government can be rescued from the opprobrium under which it has so long laboured, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority, at the same time, must be prevented; or the majority, having such coex-

istent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together; that is, in proportion as their efficacy becomes needful.

From this view of the subject, it may be concluded, that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert, results from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual. Hence, it is, that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have in general been as short in their lives, as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed, that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the union.

The two great points of difference, between a democracy and a republic, are, first, the delegation of the government, in the latter, to a small number of citizens, elected by the rest; secondly, the greatest number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen, that the public voice, pronounced by the representatives of the people, will be more consonant to the public good, than if pronounced by the people themselves, convened for the purpose. On the other hand the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interest of the people. The question resulting is, whether small or extensive republics are most favourable to the election of proper guardians of the public weal; and it is clearly decided in favour of the latter by two obvious considerations.

In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the constituents, and being proportionally greatest in the small republic, it follows, that if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practise with success the vicious arts, by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit, and the most diffusive and established characters.

It must be confessed, that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representative too little acquainted with all their local

circumstances and lesser interests; as by reducing it too much, you render him unduly attached to these, and too little fit to comprehend and pursue great and national objects. The federal constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the state legislatures.

The other point of difference is, the greater number of citizens, and extent of territory, which may be brought within the compass of republican, than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former, than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked, that where there is a consciousness of unjust or dishonourable purposes, communication is always checked by distrust, in proportion to the number whose concurrence is necessary.

Hence, it clearly appears, that the same advantage, which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic,—is enjoyed by the union over the states composing it. Does this advantage consist in the substitution of representatives, whose enlightened views and virtuous sentiments render them superior to local prejudices, and to schemes of injustice? It will not be denied that the representation of the union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties, comprised within the union, increase the security? Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular states, but will be unable to spread a general conflagration through the other states; a religious sect may degenerate into a political faction in a part of the confederacy; but the variety of sects dispersed over the entire face of it, must secure the national councils against any danger from that source: a rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire state.

In the extent and proper structure of the union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit, and supporting the character of federalists.

JAMES MADISON

Federalist No. 51, 1788

To the People of the State of New York: To what expedient then shall we finally resort for maintaining in practice the necessary partition of power among the several departments, as laid down in the constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government, as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places. Without presuming to undertake a full development of this important idea, I will hazard a few general

observations, which may perhaps place it in a clearer light, and enable us to form a more correct judgment of the principles and structure of the government planned by the convention.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent, is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted, that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies, should be drawn from the same fountain of authority, the people, through channels, having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties however, and some additional expense, would attend the execution of it. Some deviations therefore from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle; first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice, which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

It is equally evident that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means, and personal motives, to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself. A dependence on the people is no doubt the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

This policy of supplying by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see it particularly displayed in all the subordinate distributions of power; where the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other; that the private interest of every individual, may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the state.

But it is not possible to give to each department an equal power of self defense. In republican government the legislative authority, necessarily, predominates. The remedy for this inconveniency is, to divide the legislature into different branches; and to render them by different modes of election, and different principles of action, as little connected with each other, as the nature of their common functions, and their common dependence on the society, will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified. An absolute negative, on the legislature, appears at first view

to be the natural defense with which the executive magistrate should be armed. But perhaps it would be neither altogether safe, nor alone sufficient. On ordinary occasions, it might not be exerted with the requisite firmness; and on extraordinary occasions, it might be perfidiously abused. May not this defect of an absolute negative be supplied, by some qualified connection between this weaker department, and the weaker branch of the stronger department, by which the latter may be led to support the constitutional rights of the former, without being too much detached from the rights of its own department?

If the principles on which these observations are founded be just, as I persuade myself they are, and they be applied as a criterion, to the several state constitutions, and to the federal constitution, it will be found, that if the latter does not perfectly correspond with them, the former are infinitely less able to bear such a test.

There are moreover two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view.

First. In a single republic, all the power surrendered by the people, is submitted to the administration of a single government; and usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people, is first divided between two distinct governments, and then the portion allotted to each, subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other; at the same time that each will be controlled by itself.

Second. It is of great importance in a republic, not only to guard the society against the oppression of its rulers; but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: The one by creating a will in the community independent of the majority, that is, of the society itself; the other by comprehending in the society so many separate descriptions of citizens, as will render an unjust combination of a majority of the whole, very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self appointed authority. This at best is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests, of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. While all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests and classes of citizens, that the rights of individuals or of the minority, will be in little danger from interested combinations of the majority. In a free government, the security for civil rights must be the same as for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government: Since it shows that in exact proportion as the territory of the union may be formed into more circumscribed confederacies or states, oppressive combinations of a majority will be facilitated; the best security under the republican form, for the rights of every class of citizens, will be diminished; and consequently, the stability and independence of some member of the government, the only other security, must be proportionally increased. Justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign, as in a state of nature where the weaker individual is not secured against the violence of the stronger: And as in the latter state even the stronger individuals are prompted by the uncertainty of their condition, to submit to a government which may protect the weak

as well as themselves: So in the former state, will the more powerful factions or parties be gradually induced by a like motive, to wish for a government which will protect all parties, the weaker as well as the more powerful. It can be little doubted, that if the state of Rhode Island was separated from the confederacy, and left to itself, the insecurity of rights under the popular form of government within such narrow limits, would be displayed by such reiterated oppressions of factious majorities, that some power altogether independent of the people would soon be called for by the voice of the very factions whose misrule had proved the necessity of it. In the extended republic of the United States, and among the great variety of interests, parties and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good; and there being thus less danger to a minor from the will of the major party, there must be less pretext also, to provide for the security of the former, by introducing into the government a will not dependent on the latter; or in other words, a will independent of the society itself. It is no less certain that it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practicable sphere, the more duly capable it will be of self government. And happily for the republican cause, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the federal principle.

JAMES MADISON

Presidents of the United States

	Party	Term
1. George Washington (1732–1799)	Federalist	1789–1797
2. John Adams (1735–1826)	Federalist	1797–1801
3. Thomas Jefferson (1743–1826)	Democratic-Republican	1801–1809
4. James Madison (1751–1836)	Democratic-Republican	1809–1817
5. James Monroe (1758–1831)	Democratic-Republican	1817–1825
6. John Quincy Adams (1767–1848)	Democratic-Republican	1825–1829
7. Andrew Jackson (1767–1845)	Democratic	1829–1837
8. Martin Van Buren (1782–1862)	Democratic	1837–1841
9. William Henry Harrison (1773–1841)	Whig	1841
10. John Tyler (1790–1862)	Whig	1841–1845
11. James K. Polk (1795–1849)	Democratic	1845–1849
12. Zachary Taylor (1784–1850)	Whig	1849–1850
13. Millard Fillmore (1800–1874)	Whig	1850–1853
14. Franklin Pierce (1804–1869)	Democratic	1853–1857
15. James Buchanan (1791–1868)	Democratic	1857–1861
16. Abraham Lincoln (1809–1865)	Republican	1861–1865
17. Andrew Johnson (1808–1875)	Union	1865–1869
18. Ulysses S. Grant (1822–1885)	Republican	1869–1877
19. Rutherford B. Hayes (1822–1893)	Republican	1877–1881
20. James A. Garfield (1831–1881)	Republican	1881
21. Chester A. Arthur (1830–1886)	Republican	1881–1885
22. Grover Cleveland (1837–1908)	Democratic	1885–1889
23. Benjamin Harrison (1833–1901)	Republican	1889–1893
24. Grover Cleveland (1837–1908)	Democratic	1893–1897
25. William McKinley (1843–1901)	Republican	1897–1901
26. Theodore Roosevelt (1858–1919)	Republican	1901–1909
27. William Howard Taft (1857–1930)	Republican	1909–1913
28. Woodrow Wilson (1856–1924)	Democratic	1913–1921
29. Warren G. Harding (1865–1923)	Republican	1921–1923
30. Calvin Coolidge (1871–1933)	Republican	1923–1929
31. Herbert Hoover (1874–1964)	Republican	1929–1933
32. Franklin Delano Roosevelt (1882–1945)	Democratic	1933–1945
33. Harry S Truman (1884–1972)	Democratic	1945–1953
34. Dwight D. Eisenhower (1890–1969)	Republican	1953–1961
35. John F. Kennedy (1917–1963)	Democratic	1961–1963

Presidents of the United States (continued)

	Party	Term
36. Lyndon B. Johnson (1908–1973)	Democratic	1963–1969
37. Richard M. Nixon (1913–1994)	Republican	1969–1974
38. Gerald R. Ford (b. 1913)	Republican	1974–1977
39. Jimmy Carter (b. 1924)	Democratic	1977–1981
40. Ronald Reagan (b. 1911)	Republican	1981–1989
41. George H. W. Bush (b. 1924)	Republican	1989–1993
42. William Jefferson Clinton (b. 1946)	Democratic	1993–2001
43. George W. Bush (b. 1946)	Republican	2001–

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Chapter 1

Myth and Reality in American Politics, pp. 1–23

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13. According to H. Mark Roelofs, myths offer us a "nationally shared framework of political consciousness" by which we become aware of ourselves as "a people, as having an identity in history," and by which we are "prepared to recognize some governing regime . . . as legitimate." See his *Ideology and Myth in American Politics: A Critique of a National Political Mind* (Boston: Little, Brown, 1976), p. 4.
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Chapter 2

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2. Letter to James Madison, January 30, 1787, in *Thomas Jefferson: Writings,* ed. Merrill D. Peterson (New York: The Library of America, 1984), p. 882. See also p. 1402, letter to Samuel Kercheval, July 12, 1816.
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7. Robert G. Ferris and James H. Charleton, *The Signers of the Constitution* (Flagstaff, Ariz.: Interpretive Publications, 1986), pp. 14–15. For a thorough and groundbreaking treatment of the politics and ideas that led to the Convention, see Gordon S. Wood, *The Creation of the American Republic, 1776–1787* (New York: W. W. Norton, 1969).
8. Ibid., p. 19. Shays led one thousand ragtag insurgents against the arsenal, but the defeat of the uprising was made possible only after local merchants and bankers financed a defense of the weapons storehouse. The Congress could not afford to do more than provide a few guards for the arsenal.
9. Martin Diamond, *The Founding of the Democratic Republic* (Itasca, Ill.: F. E. Peacock, 1981), p. 15. For an authoritative general overview of the convention, see Max Farrand, *The Framing of the Constitution of the United States* (New Haven, Conn.: Yale University Press, 1913). See also Ferris and Charleton, pp. 35–36; and Catherine Drinker Bowen, *Miracle at Philadelphia: The Story of the Constitutional Convention, May to September 1787* (Boston: Little, Brown, 1966).
10. The quoted characterizations were communicated to the French foreign ministry by the French ambassador to the United States in 1788. See Saul K. Padover, *The Living Constitution* (New York: Mentor Books, 1953), pp. 51ff. For more general biographies of the delegates, see M. E. Bradford, *Founding Fathers: Brief Lives of the Framers of the United States Constitution,* 2nd ed. (Lawrence, Kan.: University Press of Kansas, 1994); also Ferris and Charleton, part 2.
11. "Speech in the Convention at the Conclusion of Its Deliberations," in *Benjamin Franklin, Writings,* ed. J. A. Leo Lemay (New York: Library of

America, 1987), pp. 1139–1141. On Franklin's health, see Ferris and Charleton, p. 35. For other supportive comments attributed to Franklin at the convention, see Farrand, p. 194.

12. For an in-depth analysis of the roots of the Constitution, see Donald S. Lutz, *The Origins of American Constitutionalism* (Baton Rouge: Louisiana State University Press, 1988). Also see Jack P. Greene, *The Intellectual Heritage of the Constitutional Era: The Delegates' Library* (Philadelphia: The Library Company of Philadelphia, 1986).
13. Charles Howard McIlwain, *The American Revolution: A Constitutional Interpretation* (Ithaca, N.Y.: Cornell University Press, 1958), p. 5.
14. It would be an error, however, to think of the American system as a mere variation of the modern British system. See Bruce Ackerman, *Foundations,* vol. 1 of *We the People* (Cambridge, Mass.: Belknap Press, 1991), especially his "dualist model" versus "monist model" argument in chap. 1.
15. A classic exposition of the development of the British constitutional system is found in Walter Bagehot, *The English Constitution* (London: Oxford University Press, 1928). His views on the use of charters are presented on pp. 247–249.
16. Later in the 1600s, as the Stuarts attempted to reassert royal authority, the Parliament joined the courts in elevating common law to "higher-law" status; see Greene, chap. 4.
17. See Ackerman; see also Sanford Levinson, *Constitutional Faith* (Princeton, N.J.: Princeton University Press, 1988).
18. See the reference to Bonham's Case and common-law tradition in Charles Rembar, *The Law of the Land: The Evolution of Our Legal System* (New York: Simon and Schuster, 1980), pp. 43–47, 286–287.
19. Compare with Thomas L. Pangle, "The Constitution's Human Vision," *The Public Interest, 86* (Winter 1987), 79–81.
20. Lutz contends that this situation came about because for most of the seventeenth century the British were preoccupied with trying to settle their own constitutional problems. See Lutz, p. 63.
21. See Lawrence J. R. Herson, *The Politics of Ideas: Political Theory and American Public Policy* (Homewood, Ill.: Dorsey Press, 1984), pp. 28–29.
22. See Abraham I. Katsh, "Hebraic Foundations of American Democracy," in *The Hebrew Impact on Western Civilization*, ed. Dagobert D. Runes (Secaucus, N.J.: Citadel Press, 1951), especially pp. 39–52. While steeped in the Judeo-Christian tradition, the Constitution lacks any reference to God or religion. It was in that sense designed to be "godless" in content. See Isaac Kramnick and R. Laurence Moore, *The Godless Constitution: The Case Against Religious Correctness* (New York: W. W. Norton, 1996).
23. For more on Hobbes's contribution to the work of the framers, see Walter Berns, "The New Pursuit of Happiness," *The Public Interest,* 86 (Winter 1987), 68–69.
24. See Greene, chap. 2.
25. In fact, of all the philosophers and authors cited by those who debated the Constitution, Montesquieu was mentioned most often. See Greene, pp. 43–44; also Lutz, pp. 139–147.
26. See Diamond, pp. 3–6. For a controversial interpretation of the Declaration, see Garry Wills, *Inventing America: Jefferson's Declaration of Independence* (New York: Vintage, 1978).
27. For an interesting analysis of the Constitution based on a perspective that gives special standing to the constitutional mechanisms that support the legitimacy of "We the People," see Ackerman.
28. The controversy over a national bank has a long history. For more details, see Bray Hammond, "The Bank Cases," in *Quarrels That Have Shaped the Constitution*, ed. John A. Garraty, rev. ed. (New York: Harper Torchbooks, 1987), pp. 37–55. See also William Greider, *Secrets of the Temple: How the Federal Reserve Runs the Country* (New York: Simon and Schuster, 1987), chaps. 8–9.
29. James Madison, "Federalist No. 39," in *The Federalist*, ed. Jacob E. Cooke.
30. See Michael Allen Gillespie and Michael Lienesch, eds., *Ratifying the Constitution* (Lawrence. Kan.: University Press of Kansas, 1989).
31. The deadline, originally set for 1979, was later extended by thirty-nine months by congressional action.
32. For a history of the amending process, see Richard B. Bernstein, with Jerome Agel, *Amending America: If We Love the Constitution So Much, Why Do*

We Keep Trying to Change It? (New York: Times Books, 1993).
33. For a critical assessment of the relative use of amendment and nonamendment means for changing the Constitution, see Stephen M. Griffin, "Constitutionalism in the United States: From Theory to Politics," in Levinson, ed., *Responding to Imperfection,* chap. 3.
34. See Hamilton's "Federalist No. 11," in *The Federalist,* ed. Jacob E. Cooke.
35. Kermit L. Hall, *The Magic Mirror: Law in American History* (New York: Oxford University Press, 1989), p. 6. Also see Cass R. Sunstein, *The Partial Constitution* (Cambridge, Mass.: Harvard University Press, 1993).
36. Sunstein, pp. 32–37.
37. For an excellent introduction to how the rule of law affects public officials, see David H. Rosenbloom and James D. Carroll, *Toward Constitutional Competence: A Casebook for Public Administrators* (Englewood Cliffs, N.J.: Prentice-Hall, 1990).
38. See "Federalist No. 51," also in the Appendix.
39. Jack N. Rakove, *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (Baltimore, Md.: Johns Hopkins University Press, 1979), pp. 394–395.
40. A move to impeach a member of the Senate was dismissed in 1797 when the Senate determined that the process did not apply to members of Congress. Two other cases against judges ended with resignations before trials could take place, and the impeachment of a cabinet member resulted in an acquittal.
41. In the case of President Richard Nixon, he resigned after the House Judiciary Committee had voted to send articles of impeachment to the full chamber, but before the House could consider those charges.
42. "Federalist No. 44," in *The Federalist,* ed. Jacob E. Cooke.
43. See Seymour Martin Lipset and William Schneider, *The Confidence Gap: Business, Labor, and Government in the Public Mind* (New York: The Free Press, 1983), pp. 15–29.
44. Samuel P. Huntington, *American Politics: The Politics of Disharmony* (Cambridge, Mass.: Harvard University Press, 1981), p. 30.
45. Theodore H. White, "The American Idea," *New York Times Magazine,* July 6, 1986, p. 13.
46. Quoted in Farrand, pp. 209–210.
47. Quoted in Levinson, p. 11.

Chapter 3

Federalism and Intergovernmental Relations, pp. 60–88

1. For information on the development of the electoral college, see William C. Kimberling, "The Electoral College," at *http://www.fec.gov/ pdf/elec-coll.pdf.*
2. A detailed study of the debates of that early period is provided in Stanley Elkins and Eric McKitrick, *The Age of Federalism: The Early American Republic, 1788–1800* (New York: Oxford University Press, 1993).
3 "Can States Act Without Federal Permission?" *New York Times,* November 16, 1986, p. E5.
4. The comparisons for 1972 and 1997 are drawn from a study conducted by The Pew Research Center for the People & the Press titled "Deconstructing Distrust: How Americans View Government," issued in March 1998 and located online at *http://www.people-press.org/trustrpt.htm.* For information on related studies, see Morton Keller, "State Power Needn't Be Resurrected Because It Never Died," *Governing,* 2, No. 1 (October 1988), 53–57; and the *Washington Post,* Kaiser Family Foundation, and Harvard University Survey Project, "Why Don't Americans Trust the Government?" February 5, 1996, found at *http://www.kff.org/content/archive/1110/governs.html.*
5. In a 1936 Gallup poll, 56 percent of the respondents favored the federal government over state governments. See Keller, p. 57.
6 Terry Sanford, *Storm over the States* (New York: McGraw-Hill, 1967), p. 35.
7. For a detailed survey of the concept of federalism, see S. Rufus Davis, *The Federal Principle: A Journey Through Time in Quest of Meaning* (Berkeley, Calif.: University of California Press, 1978).
8. For a general overview of the conflicting theories of federalism, see Richard H. Leach, *American Federalism* (New York: Norton, 1970), chap. 1. See also William H. Riker, *Federalism: Origin, Operation, Significance* (Boston: Little, Brown, 1964).
9. This view had its most direct expression in the Virginia and Kentucky resolutions of 1798.

Written by Jefferson and Madison, the resolutions called for the "nullification" of the unpopular Alien and Sedition Acts—laws that had led to the conviction of several newspaper editors critical of American foreign policy decisions. The resolutions circulated among the states, but the election of Jefferson as president in 1800 seemed to end the controversy—since the new president was a leading advocate of this view.

10. The quote is from Justice Barbour's decision in *Miln* v. *New York* (1837); quoted in W. Brooke Graves, *American Intergovernmental Relations: Their Origins, Historical Development, and Current Status* (New York: Scribner's, 1964), pp. 319–320.
11. J. G. Randall and David Donald, *The Civil War and Reconstruction*, 2nd ed., 1961, pp. 97–102.
12. From the Supreme Court decision in Tarbel's Case, quoted in Deil S. Wright, *Understanding Intergovernmental Relations*, 3rd ed. (Monterey, Calif.: Brooks/Cole, 1988), p. 41. For a more general discussion, see Graves, pp. 321–324.
13. *Hammer* v. *Dagenhart* (1918).
14. The federal government did provide special funding for canals and similar projects earlier in the century, and the states did receive parts of a national budget surplus into the 1830s. But the first grant-in-aid program was the Morrill Act. See Graves, chap. 14.
15. See David B. Walker, *The Rebirth of Federalism: Slouching Toward Washington* (Chatham, N.J.; Chatham House, 1995), pp. 82–83.
16. *Historical Statistics of the United States: Colonial Times to 1970*, Table Y638, p. 1125.
17. See Walker, chap. 4. See also Wright, pp. 71–72.
18. Roscoe C. Martin, *The Cities and the Federal System* (New York: Atherton Press, 1965), chaps. 4 and 5. See also Advisory Commission on Intergovernmental Relations, *Public Assistance: The Growth of a Federal Function* (Washington, D.C.: ACIR, 1980), pp. 24–25.
19. See Kenneth T. Palmer, "The Evolution of Grant Policies," in *The Changing Politics of Federal Grants*, ed. Lawrence D. Brown, James W. Fossett, and Kenneth T. Palmer (Washington, D.C.: The Brookings Institution, 1984).
20. For a general overview of how the national government used this strategy, see Advisory Commission on Intergovernmental Relations, *Regulatory Federalism: Policy, Process, Impact and Reform* (Washington, D.C.: ACIR, 1984).
21. For the story of how these cuts were accomplished, see David A. Stockman, *The Triumph of Politics: How the Reagan Revolution Failed* (New York: Harper and Row, 1986).
22. See George E. Peterson, "Federalism and the States: An Experiment in Decentralization," in *The Reagan Record: An Assessment of America's Changing Domestic Priorities*, ed. John L. Palmer and Isabel V. Sawhill (Cambridge, Mass.: Ballinger, 1984), p. 228.
23. Ibid., pp. 229–230.
24. For the latest figures on federal intergovernmental grants-in-aid, see *Significant Features of Fiscal Federalism*, an annual publication issued by the Advisory Commission on Intergovernmental Relations.
25. John Shannon, "The Return of Fend-For-Yourself Federalism: The Reagan Marks," *Intergovernmental Perspective*, 13 (Summer 1987), 34–37.
26. Clinton was prominently featured in one book that addressed the strengths of state governments in the 1980s; see David Osborne, *Laboratories of Democracy* (Boston: Harvard Business School Press, 1988).
27. In *Baker* v. *Carr* (1962), for instance, the Court forced the states to reapportion their legislative seats to guarantee equal representation for all their citizens. In *Roe* v. *Wade* (1973), the Court limited the authority states have to regulate abortion (see Chapter 4). Finally, in *Garcia* v. *San Antonio Metropolitan Transit Authority* (1985), the Court held that federal wage and hour laws apply to state and local governments. See Robert Pear, "Study Urges Fight for States' Power," *New York Times*, November 9, 1986, pp. 1, 20.
28. See Morris P. Fiorina, Congress: *Keystone of the Washington Establishment* (New Haven, Conn.: Yale University Press, 1977), p. 48.
29. David E. Satterfield III, representative from Richmond, Virginia, quoted in Rochelle L. Stanfield, "Federal Aid—Taking the Good with the Bad," *National Journal* (July 8, 1978), 1076.
30. See Ann O'M. Bowman and Richard C. Kearney, *The Resurgence of the States* (Englewood Cliffs, N.J.: Prentice-Hall, 1986), p. 136.
31. Ibid., pp. 25–27. See also Osborne's *Laboratories of Democracy*. Each year, Governing magazine publishes

numerous state and local "government success stories" that rarely make headlines elsewhere.
32. Rochelle L. Stanfield, "The New Federalism," *National Journal* (January 28, 1995), 227.
33. See ACIR, *State Government Capability.*
34. Luther H. Gulick, quoted in ACIR, *State Government Capability,* p. 1.
35. See Ira Sharkansky, *The Maligned States: Policy Accomplishments, Problems, and Opportunities* (New York: McGraw-Hill, 1972). On the waxing and waning of the role of the states in American federalism, see Keller, pp. 53–57.
36. See ACIR, *State Government Capability.*
37. For an interesting perspective on how Americans have viewed their local governments, see Anwar Syed, *The Political Theory of American Local Government* (New York: Random House, 1966).
38. Data from the 1997 Census of Governments, Volume 1: Government Organization, issued in August 1999 by the U.S. Census Bureau. The document, along with other results from the 1997 Census of Governments, can be found at *http://www.census.gov/ prod/www/abs/govern.html.*
39. Statistics for local areas from U.S. Department of Commerce, Bureau of the Census, *State and Metropolitan Area Data Book,* 1991, 4th ed. (Washington, D.C.: U.S. Government Printing Office, 1991), tbs. 2 and C.
40. Robert Pear, "Saying Medicaid Experiments Cut Services to Poor, Clinics Sue," *New York Times,* June 12, 1994, p. A30.
41. See Donald H. Haider, *When Governments Come to Washington: Governors, Mayors, and Intergovernmental Lobbying* (New York: Free Press, 1974). See also Alan Ehrenhalt, "As Interest in Its Agenda Wanes, a Shrinking Urban Bloc in Congress Plays Defense," *Governing,* 2, No. 10 (July 1989), 21–25.
42. See Jonathan Walters, "Lobbying for the Good Old Days," *Governing, 4,* No. 9 (June 1991), 32–37.

Chapter 4

The Heritage of Rights and Liberties, pp. 89–125

1. Quoted in Mary Ann Glendon, Rights Talk: *The Impoverishment of Political Discourse* (New York: Free Press, 1991) p. 8.
2. *Barron* v. *Baltimore,* 32 U.S. (7 Pet.) 243 (1833).
3. See Justice Black's concurring opinion in *Adamson* v. *California,* 332 U.S. 67 (1947).
4. *Palko* v. *Connecticut,* 302 U.S. 319 (1937).
5. *Milk Wagon Drivers Union* v. *Meadowmoor Dairies,* 312 U.S. 287 (1941).
6. *Schenck* v. *U.S.,* 249 U.S. 47 (1919).
7. *Gitlow* v. *New York,* 268 U.S. 652 (1925).
8. *Texas* v. *Johnson,* 491 U.S. 397 (1989).
9. *United States* v. *Eichman,* 496 U.S. 310 (1990).
10. *United States* v. *O'Brien,* 391 U.S. 367 (1968).
11. *Madsen* v. *Women's Health Center Inc.,* 1994.
12. *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624 (1943).
13. *Near* v. *Minnesota,* 283 U.S. 697 (1931).
14. *New York Times* v. *U.S.,* 403 U.S. 713 (1971).
15. *New York Times* v. *Sullivan,* 376 U.S. 254 (1964).
16. *Time, Inc.* v. *Firestone,* 424 U.S. 96 (1976).
17. *Flynt* v. *Falwell,* 485 U.S. 46 (1988).
18. *Roth* v. *U.S.,* 354 U.S. 476 (1957).
19. *Memoirs of a Woman of Pleasure* v. *Massachusetts,* 382 U.S. 975 (1966).
20. *Miller* v. *California,* 413 U.S. 15 (1973).
21. *Reno* v. *American Civil Liberties Union,* 117 S.Ct. 2329.
22. *United States* v. *Playboy Entertainment Group,* 30 F. Supp. 2d 702.
23. C. Herman Pritchett, *Constitutional Civil Liberties* (Englewood Cliffs, N.J.: Prentice-Hall, 1984), pp. 132–133.
24. *Everson* v. *Board of Education,* 330 U.S. 1 (1947).
25. *Lemon* v. *Kurtzman,* 403 U.S. 602 (1971).
26. *Mitchell* v. *Helms,* 151 F. 3d 347.
27. *Engel* v. *Vitale,* 370 U.S. 421 (1962).
28. *School District of Abington Township* v. *Schempp,* 374 U.S. 203 (1963).
29. *Santa Fe Independent School District* v. *Doe,* 168 F. 3d 806.
30. *Marsh* v. *Chambers,* 463 U.S. 783 (1983).
31. *Allegheny County* v. *American Civil Liberties Union,* 492 U.S. 573 (1989).
32. *Reynolds* v. *United States,* 98 U.S. 145 (1879).
33. *Braunfeld* v. *Brown,* 366 U.S. 599 (1961).
34. *Jacobson* v. *Massachusetts,* 197 U.S. 11 (1905).
35. *Wisconsin* v. *Yoder,* 406 U.S. 215 (1972).
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37. *Powell* v. *Alabama,* 287 U.S. 45 (1932).
38. *Gideon* v. *Wainwright,* 372 U.S. 335 (1963).
39. *Argersinger* v. *Hamlin,* 407 U.S. 25 (1972).
40. *Escobedo* v. *Illinois,* 378 U.S. 478 (1964).

41. *Miranda* v. *Arizona,* 384 U.S. 436 (1966).
42. *Duckworth* v. *Eagan,* 492 U.S. 195 (1989).
43. *New York* v. *Quarles,* 467 U.S. 649 (1984).
44. *Arizona* v. *Fuliminante,* 111 S.Ct. 1246 (1991).
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46. *Schneckloth* v. *Bustamonte,* 412 U.S. 218 (1973).
47. *Mapp* v. *Ohio,* 367 U.S. 643 (1961).
48. *Nix* v. *Williams,* 476 U.S. 431 (1984).
49. *United States* v. *Leon,* 468 U.S. 897 (1984).
50. *Robinson* v. *California,* 370 U.S. 660 (1962).
51. *Hammelin* v. *Michigan,* 111 S.Ct. 2680 (1991).
52. *Furman* v. *Georgia,* 408 U.S. 238 (1972).
53. *Woodson* v. *North Carolina,* 428 U.S. 280 (1976).
54. *Thompson* v. *Oklahoma,* 487 U.S. 815 (1988).
55. *Penry* v. *Lynaugh,* 492 U.S. 302 (1989) and *Stanford* v. *Kentucky,* 492 U.S. 361 (1989).
56. *McCleskey* v. *Zant,* 111 S.Ct. 1454 (1991).
57. *Payne* v. *Tennessee,* 111 S.Ct. 2597 (1991).
58. Charles Warren and Louis Brandeis, "The Right of Privacy," *Harvard Law Review,* 4, p. 193 (1890).
59. *Griswold* v. *Connecticut,* 381 U.S. 479 (1965).
60. *Roe* v. *Wade,* 410 U.S. 113 (1973).
61. *Webster* v. *Reproductive Health Services,* 492 U.S. 490 (1989).
62. *Planned Parenthood of Southeastern Pennsylvania* v. *Casey,* 505 U.S. 833 (1992).
63. *Washington* v. *Glucksberg,* 117 S.Ct. 2258 (1997). The limits to state power were further defined by the Court in *Stenberg* v. *Carhart* (2000) when the Court, by a 5–4 vote, overturned Nebraska's ban on what is often called the partial-birth abortion procedure. In outlawing such procedures, Nebraska had, according to Justice Stephen Breyer, written so broadly that it prohibited othertypes of previability procedures, not just partial-birth abortions. The statute's breadth constituted an undue burden on a woman's right to an abortion. Although the Court may in the future uphold bans on partial-birth abortions, the Court made it clear that such bans would have to be narrowly tailored to prohibit only a specific procedure.
64. C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford University Press, 1966).
65. *Plessy* v. *Ferguson,* 163 U.S. 537 (1896).
66. Paul Oberst, "The Strange Career of *Plessy* v. *Ferguson,*" Arizona Law Review, 15 (1973).
67. *Cumming* v. *Richmond County Board of Education,* 175 U.S. 528 (1899).
68. *Missouri ex rel. Gaines* v. *Canada,* 305 U.S. 337 (1938).
69. *Sweatt* v. *Painter,* 339 U.S. 629 (1950).
70. *Brown* v. *Board of Education of Topeka,* 347 U.S. 483 (1954).
71. *Brown* v. *Board of Education II,* 349 U.S. 294 (1955).
72. *Alexander* v. *Holmes County Board of Education,* 396 U.S. 19 (1969).
73. *Milliken* v. *Bradley,* 418 U.S. 717 (1974).
74. See Pritchett, p. 345.
75. *Chisom* v. *Roemer,* 501 U.S. 380 (1991) *and Houston Lawyers' Association* v. *Attorney General of Texas,* 501 U.S. 419 (1991).
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77. *Hoyt* v. *Florida,* 368 U.S. 62 (1961).
78. *Craig* v. *Boren,* 429 U.S. 190 (1976).
79. *Kahn* v. *Shevin,* 416 U.S. 351 (1974).
80. *United States* v. *Virginia,* 1997.
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82. *General Electric Co.* v. *Gilbert,* 429 U.S. 125 (1976).
83. *Williams* v. *Saxbe,* 413 F. Supp. 654 (D.D.C. 1976).
84. *Meritor Savings Bank* v. *Vinson,* 477 U.S. 57 (1986).
85. *Harris* v. *Forklift,* 570 U.S. 17 (1993).
86. *Bowers* v. *Hardwick,* 478 U.S. 186 (1986).
87. *Romer* v. *Evans,* 1994.
88. *Boy Scouts of America* v. *Dale,* 160 N.J. 562, 734 A. 2d 1196.
89. *Plyer* v. *Doe,* 457 U.S. 202 (1982).
90. *Regents of the University of California* v. *Bakke,* 438 U.S. 265 (1978).

Chapter 5

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2. *New York Times,* February 16, 1997, Section 4, p. 1.
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4. W. H. Hartley and W. S. Vincent, *American Civics,* 4th ed. (New York: Harcourt Brace Jovanovich, 1983), p. 221.
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10. M. Margaret Conway, *Political Participation in the United States,* 2nd ed. (Washington, D.C.: Congressional Quarterly Press, 1991), pp. 23–25; Hennessy, p. 200.
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17. *American National Election Study,* 1984, Center for Political Studies, University of Michigan, Ann Arbor.
18. Richard Morin, "The Public May Not Know Much, But It Knows What It Doesn't Like," *Washington Post National Weekly Edition,* January 23–29, 1989, p. 37.
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21. *America Unplugged: Citizens and Their Government, Council for Excellence in Government, 1999.*
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24. The Roper Organization, Roper Report 93-2, January 9–23, 1993.
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27. *Gallup Report* (May 1987), 6–7; Pat Dunham, *Electoral Behavior in the United States* (Englewood Cliffs, N.J.: Prentice-Hall, 1991), p. 31; Survey by Louis Harris and Associates, June 24–29, 1993.
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29. Linda J. Sax, Alexander W. Astin, William S. Korn, and Katheryn M. Mahoney, *The American Freshman: National Norms for Fall 1999* (Los Angeles: Higher Education Research Institute, Graduate School of Education, UCLA, 1999).
30. Ibid., pp. 19, 29.
31. Ibid., p. 32.
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33. Ibid., p. 29.
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17. See *In Re Sealed Case* (Espy), 121 F.3d 729 (1997) and *In Re Lindsey,* 158 F. 3d 1263 (1998).
18. See *In Re Sealed Case (Secret Service),* 148 F.3d 1073 (1998).
19. Quoted in Louis Fisher, *The Politics of Shared Power: Congress and the Executive* (Washington, D.C.: Congressional Quarterly Press, 1981), p. 9.
20. Richard M. Pious, *The American Presidency* (New York: Basic Books, 1979), p. 340.
21. Corwin, p. 189.
22. Quoted in Pious, p. 395.
23. For an excellent discussion of the Gulf War and the War Powers Resolution, see Marcia Lynn Whicker, Raymond A. Moore, and James P. Pfiffner, *The Presidency and the Persian Gulf War* (Lexington: University of Kentucky Press, 1996).
24. Richard Neustadt, "The Presidency and Legislation: Planning the President's Program," *American Political Science Review,* 49 (1955), 1015.
25. Quoted in Michael L. Mezey, *Congress, the President, and Public Policy* (Boulder, Colo.: Westview Press, 1989), p. 10.
26. Clinton Rossiter, *The American Presidency* (New York: Harcourt, Brace, 1960).
27. For a complete account of the growth of presidential staffing, see Stephen Hess, *Organizing the Presidency* (Washington, D.C.: The Brookings Institution, 1976).
28. Cronin, pp. 276–278.
29. For a history of such clearance procedures, see Richard E. Neustadt, "Presidency and Legislation: The Growth of Central Clearance," *American Political Science Review,* 48 (1954), 150–158.
30. George Edwards and Stephen Wayne, *Presidential Leadership: Politics and Policy Making* (New York: St. Martin's, 1985), p. 189.
31. Barbara Hinckley, *Problems of the Presidency: A Text with Readings* (Glenview, Ill.: Scott, Foresman, 1985), p. 101.
32. Quoted in ibid., p. 105.

33. Quoted in Richard E. Neustadt, *Presidential Power: The Politics of Leadership from FDR to Carter* (New York: Wiley, 1980), p. 9.
34. Ibid., chap. 3.
35. Quoted in Doris Kearns, *Lyndon Johnson and the American Dream* (New York: Harper and Row, 1976), p. 226.
36. Quoted in Pious, p. 189.
37. George Edwards, *Presidential Influence in Congress* (San Francisco: Freeman, 1980), p. 89.
38. Douglas Rivers and Nancy L. Rose, "Passing the President's Program: Public Opinion and Presidential Influence in Congress," *American Journal of Political Science,* 29 (1985), 187.
39. For a discussion of the strategy of going public, see Samuel Kernell, *Going Public: New Strategies of Presidential Leadership* (Washington, D.C.: Congressional Quarterly Press, 1986).
40. Paul C. Light, *The President's Agenda: Domestic Policy Choice from Kennedy to Carter* (Baltimore: Johns Hopkins University Press, 1983), pp. 36–37.
41. Paul Brace and Barbara Hinckley, *Follow the Leader* (New York: Basic Books, 1994), p. 161.

Chapter 12

Bureaucracy, pp. 318–354

1. The circumstances surrounding that tragic fire were studied by a panel that issued its final report a year after the tragedy; see "Final Report of the Interagency Management Review Team South Canyon Fire," posted at http://www.fs.fed.us/land/scanyon2.htm.
2. See National Election Studies, Center for Political Studies, University of Michigan, "The NES Guide to Public Opinion and Electoral Behavior: Do People in Government Waste Tax Money, 1958–1998," http://www.umich.edu/~nes/nesguide/toptable/tab5a_3.htm.
3. Titled "America Unplugged: Citizens and Their Government," the survey was carried out by Peter D. Hart and Robert Teeter; it is posted at http://www.excelgov.org/publication/excel/usunplugged.htm.
4. For these and related survey results, see The National Election Studies, Center for Political Studies, University of Michigan, "The NES Guide to Public Opinion and Electoral Behavior" http://www.umich.edu/~nes/nesguide/nesguide.htm. (Ann Arbor, Mich.: University of Michigan. Center for Political Studies [producer and distributor], 1995–1998).
5. The figures for 1999 are from Table 17.5 of the "Historical Tables of the Fiscal Year 2001 U.S. Budget"; see http://w3.access.gpo.gov/usbudget/fy2001/pdf/hist.pdf.
6. The rest are employed in the legislative (approximately thirty-nine thousand) and judicial (twenty-eight thousand) branches. Civilian employment does not include figures from the Central Intelligence Agency and other intelligence-gathering organizations. These and other detailed statistics are gathered and issued on a regular basis by the U.S. Office of Personnel Management (OPM). You can find the latest federal workforce data at http://www.opm.gov/feddata/Index.htm.
7. The Office of Personnel Management posts a "Profile of the Typical Federal Employee" at http://www.opm.gov/feddata/html/prof0999.htm.
8. Data on presidential appointees is posted by OPM on a regular basis; for access. see http://www.opm.gov/feddata/.
9. See Mathew Crenson, *The Federal Machine* (Baltimore, Md.: Johns Hopkins University Press, 1975).
10. See George T. Kurian, ed., *A Historical Guide to the U.S. Government* (New York. Oxford University Press, 1998).
11. See Donald F. Kettl, *Government by Proxy: (Mis?)Managing Federal Programs* (Washington. D.C.: Congressional Quarterly Press, 1988). On the impact this is having on the civil service, see Paul C. Light, The New Public Service (Washington. D.C.: The Brookings Institution, 1999).
12. Each year, *Government Executive* magazine publishes a summary of the top federal contractors: see http://www.governmentexecutive.com/top200/.
13. See Theodore Draper, *A Very Thin Line: The Iran-Contra Affair* (New York: Simon and Schuster. 1991). The overturned conviction of Oliver North has not taken him out of the spotlight. In 1994 North won the Republican Party nomination for the U.S. Senate in Virginia, but lost in the general election.
14. See Max J. Skidmore, *Social Security and Its Enemies: The Case for America's Most Efficient Insurance Program*

(Boulder, Colo., Westview Press, 1999); also Paul Light, Artful Work: The Politics of Social Security Reform (New York: Random House, 1985).

15. See Cornelius M. Kerwin, *Rulemaking: How Government Agencies Write Law and Make Policy* (Washington, D.C.: Congressional Quarterly Press, 1994).
16. See Harold Seidman and Robert Gilmour, *Politics, Position, and Power: From the Positive to the Regulatory State,* 5th ed. (New York: Oxford University Press, 1997).
17. See Leonard D. White, *The Jacksonians: A Study in Administrative History, 1829–1861* (New York: Free Press, 1954), chap. 4.
18. Data on government employment are drawn from federal census and budgetary data posted at http://www.census.gov/govs/www/apes.html,http://w3.access.gpo.gov/usbudget/fy2001/pdf/hist.pdf, and http://www.census.gov/prod/ 99pubs/99statab/sec10.pdf.
19. Herbert Kaufman, *Red Tape: Its Origins, Uses, and Abuses* (Washington, D.C.: The Brookings Institution, 1977), p. 2.
20. See David A. Stockman, *The Triumph of Politics: How the Reagan Revolution Failed* (New York: Harper and Row, 1986).
21. For example, see R. Douglas Arnold, *Congress and the Bureaucracy: A Theory of Influence* (New Haven, Conn.: Yale University Press, 1979).
22. Norton E. Long, "Power and Administration," *Public Administration Review,* 9 (Autumn 1949), 257–264.
23. See Francis E. Rourke, *Bureaucracy, Politics, and Public Policy,* 3rd ed. (Boston: Little, Brown, 1984).
24. See Arnold.
25. See A. Lee Fritschler and James M. Hoefler, *Smoking and Politics: Policymaking and the Federal Bureaucracy,* 5th ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1996). Also see Richard Kluger, *Ashes to Ashes: America's Hundred-Year Cigarette War, the Public Health, and the Unabashed Triumph of Philip Morris* (New York: Vintage Books, 1997).
26. See Margaret Kriz, "Where There's Smoke . . . ," *National Journal* (May 7, 1994), 1056–1060.
27. The concept of issue networks was first described in detail by Hugh Heclo in "Issue Networks and the Executive Establishment," in *The New American Political System,* ed. Anthony King (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1978), chap. 3.
28. See Norman J. Vig and Michael E. Kraft, eds., *Environmental Policy in the 1980s* (Washington, D.C.: Congressional Quarterly Press, 1984).
29. Stockman, pp. 278, 296–297.
30. See Richard P. Nathan, *The Administrative Presidency* (New York: Wiley, 1983), pp. 74–76.
31. See Joel D. Aberbach, "The President and the Executive Branch," in *The Bush Presidency: First Appraisals,* ed. Colin Campbell and Bert S. Rockman (Chatham, N.J.: Chatham House, 1991), especially pp. 232–235.
32. Regarding presidential control of the bureaucracy, see the web site of the Office of Management and Budget at http://www.white house.gov/omb/.
33. Quoted in James L. Sunquist, *The Decline and Resurgence of Congress* (Washington, D.C.: The Brookings Institution, 1981), p. 320.
34. See Alfred E. Marcus, *Promise and Performance: Choosing and Implementing an Environmental Policy* (Westport, Conn.: Greenwood Press, 1980).
35. See Joel D. Aberbach, *Keeping a Watchful Eye: The Politics of Congressional Oversight* (Washington, D.C.: The Brookings Institution, 1990).
36. See Clyde H. Farnsworth, "In Hearings, I.S.R. Agent Tells of Reprisals, Gifts, and Nepotism," *New York Times,* July 27, 1989, pp. A1, D2; also "I.R.S. Has Plan to Prevent Misconduct by Its Workers," *New York Times,* January 15, 1990, p. D1. Also see the CNN story, "IRS Reforms a Work in Progress," April 15, 1999, at http://www.cnn.com/US/9904/15/irs.reforms/. Also visit the IRS web site, http://www.irs.gov/.
37. See Bernard Rosen, *Holding Government Bureaucracies Accountable,* 2nd ed. (New York: Praeger, 1989). Also David H. Rosenbloom and James D. Carroll, *Toward Constitutional Competence: A Casebook for Public Administrators* (Englewood Cliffs, N.J.: Prentice-Hall, 1990).
38. See Louis Fisher, "The Administrative World of Chadha and Bowsher," *Public Administration Review,* 47, No. 3 (May/June 1987), 213–219.
39. For more information on whistle-blowing, see the web site of the National Whistleblower Center at http://www.whistleblowers.org/.
40. See Paul C. Light, Monitoring Government: *Inspectors General and the Search for Accountability* (Washington, D.C.: The Brookings Institution, 1993).

41. Charles T. Goodsell, *The Case for Bureaucracy: A Public Administration Polemic,* 3rd ed. (Chatham, N.J.: Chatham House, 1994).
42. See Gerald E. Caiden, "What Is Maladministration?" *Public Administration Review,* 51, No. 6 (November/December 1991), pp. 486–493. See also William T. Gormley, Jr., *Taming the Bureaucracy: Muscles, Prayers, and Other Strategies* (Princeton, N.J.: Princeton University Press, 1989).
43. James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic Books, 1989), pp. 326–331.
44. See Frederic A. Bergerson, *The Army Gets an Air Force: Tactics of Insurgent Bureaucratic Politics* (Baltimore, Md.: Johns Hopkins University Press, 1980).
45. See E. S. Savas, *Privatization: The Key to Better Government* (Chatham, N.J.: Chatham House, 1987); for a more critical approach, see John D. Donahue, *The Privatization Decision: Public Ends, Private Means* (New York: Basic Books, 1989).
46. See Milton Friedman and Rose Friedman, *Free to Choose: A Personal Statement* (New York: Avon, 1981), pp. 140–178. See also John E. Chubb and Terry M. Moe, *Politics, Markets, and America's Schools* (Washington, D.C.: The Brookings Institution, 1990).
47. See the Report of the National Commission on the Public Service (Volker Commission), *Leadership for America: Rebuilding the Public Service* (Lexington, Mass.: D. C. Heath, 1989).
48. David Osborne and Ted Gaebler, *Reinventing Government* (Reading, Mass.: Addison-Wesley, 1997).
49. See Melvin J. Dubnick and Barbara S. Romzek, *American Public Administration: Politics and the Management of Expectations* (New York: Macmillan, 1991), especially chap. 3.

Chapter 13

Courts, Judges, and the Law, pp. 355–384

1. Richard J. Richardson and Kenneth N. Vines, *The Politics of Federal Courts: Lower Courts in the United States* (Boston: Little, Brown, 1970).
2. For a comprehensive discussion of the uses of diversity jurisdiction, see Victor E. Flango, "Attorney's Perspectives on Choice of Forum in Diversity Cases," *Akron Law Review,* 25 (Summer 1991), 1–82.
3. "CQ Law/Judiciary," *Congressional Quarterly Weekly Report* (November 26, 1988), p. 3393.
4. Quoted in Howard Ball, *Courts and Politics: The Federal Judicial System* (Englewood Cliffs, N.J.: Prentice-Hall, 1980), p. 176.
5. "CQ on the Floor," *Congressional Quarterly Weekly Report* (March 20, 1970), p. 776.
6. See Laurence H. Tribe, *God Save This Honorable Court: How the Choice of Supreme Court Justices Shapes Our History* (New York: Random House, 1985).
7. Quoted in Stephen Wasby, *The Supreme Court in the Federal System,* 2nd ed. (New York: Holt, Rinehart and Winston, 1984), p. 89.
8. *The Supreme Court: Justice and the Law* (Washington, D.C.: Congressional Quarterly Press, 1981), p. 163.
9. John Schmidauser, *Judges and Justices: The Federal Appellate Judiciary* (Boston: Little, Brown, 1979), p. 96.
10. Sheldon Goldman and Thomas P. Jahnige, *The Federal Courts as a Political System* (New York: Harper and Row, 1985), p. 250.
11. See Stephen Wasby, *The Supreme Court in the Federal System,* 3rd ed. (New York: Holt, Rinehart and Winston, 1984), pp. 91–97.
12. Quoted in Henry J. Abraham, *The Judicial Process* (New York: Oxford University Press, 1980), p. 203.
13. *Webster* v. *Reproductive Health Services,* 492 U.S. 490 (1989).
14. Doris Marie Provine, *Case Selection in the United States Supreme Court* (Chicago: University of Chicago Press, 1980).
15. Quoted in David M. O'Brien, *Storm Center: The Supreme Court in American Politics,* 2nd ed. (New York: Norton, 1990), p. 283.
16. Quoted in Bob Woodward and Scott Armstrong, *The Brethren: Inside the Supreme Court* (New York: Avon Books, 1979), p. 490.
17. *Brown* v. *Board of Education II,* 349 U.S. 294 (1955).
18. William J. Brennan, "Inside View of the High Court," *New York Times Magazine,* October 6, 1963, p. 22.
19. *Marbury* v. *Madison,* 5 U.S. (1 Cranch) 137 (1803).
20. For a complete discussion of the *Marbury* decision, see Craig R. Ducat, *Modes of Constitutional Interpretation* (St. Paul, Minn.: West, 1978), pp. 1–41.
21. See in particular Nathan Glazer, "Toward an Imperial Judiciary," *The Public Interest* 47 (Fall 1975), 104–123; and Raoul Berger, *Government by*

the Judiciary: The Transformation of the Fourteenth Amendment (Cambridge, Mass.: Harvard University Press, 1977).
22. Tribe, p. 42.
23. For a conservative critique of the original intent approach, see Richard A. Posner, "What Am I? A Potted Plant?" *New Republic,* September 28, 1987, 23–25.
24. *Furman* v. *Georgia,* 408 U.S. 238 (1972).
25. See Jack Peltason, *Fifty-eight Lonely Men: Southern Federal Judges and School Desegregation* (Urbana: University of Illinois Press, 1971).
26. *Oregon* v. *Mitchell,* 400 U.S. 112 (1970).
27. Cited in O'Brien, p. 361.
28. Quoted in Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Knopf, 1976), p. 753.

Chapter 14

Domestic Policy and Policymaking, pp. 385–422

1. In 1997 and 1998, C-Span, the cable channel devoted to public affairs programming, retraced the 1831 travels of Tocqueville. See the web site of "The Alexis de Tocqueville Tour: Exploring Democracy in America" at http://www.c-span.org/alexis/.
2. See de Tocqueville's *Democracy in America,* especially Volume I, Chapters 15–16 and Section 4 of Volume II. There are many editions of this book in print. An on-line version of the complete work is available from the University of Virginia at http://xroads.virginia.edu/~HYPER/DETOC/ toc_indx.html.
3. For an exceptionally well-written history and assessment of the 1994 debate over health care reform, see Theda Skocpol, *Boomerang: Health Care Reform and the Turn Against Government* (New York: W. W. Norton, 1997), especially chap. 5.
4. For a classic statement of this position, see Arthur M. Okun, *Equality and Efficiency: The Big Tradeoff* (Washington, D.C.: The Brookings Institution, 1975). Ironically, Okun's purpose was to present a realistic justification for government intervention in the economy under some circumstances.
5. Garry Wills, *A Necessary Evil: A History of American Distrust of Government* (New York: Simon and Schuster, 1999), p. 17.
6. See Herbert Stein, *Presidential Economics: The Making of Economic Policy from Roosevelt to Reagan and Beyond,* rev. ed. (New York: Simon and Schuster, 1985).
7. For example, see George Gilder, *Wealth and Poverty* (New York: Basic Books, 1981).
8. This 1993 survey of 1,507 Americans was conducted by the Times Mirror Center for the People and the Press (now called the Pew Research Center for the People and the Press).
9. See James E. Anderson, *Public Policymaking: An Introduction,* 4th ed. (Boston: Houghton Mifflin, 2000).
10. Considerable controversy and drama accompanied the "discovery" of AIDS; it is chronicled in Randy Shilts, *And the Band Played On: Politics, People, and the AIDS Epidemic* (New York: Penguin Books, 1988).
11. See Matthew A. Crenson, *The Un-Politics of Air Pollution: A Study of Non-Decisionmaking in the Cities* (Baltimore, Md.: Johns Hopkins University Press, 1971), pp. 1–2.
12. On the 1988 reforms, see Julie Rovner, "Welfare Reform: The Issue That Bubbled Up from the States to Capitol Hill," Governing, 2, No. 2 (December 1988), 17–21. For an overview of the history behind the 1996 reforms, see the timeline provided by the American Public Human Services Association at http://www.aphsa.org/reform/timeline.htm.
13. During the debate, many newspapers and other periodicals published such analyses. There were also books published that typically reflected specific positions on Clinton's health care plan. For example, see Paul Starr, *The Logic of Health Care Reform: Why and How the President's Plan Will Work,* rev. ed. (New York: Penguin Books, 1994). On the ultimate failure of the proposals, see Skocpol.
14. See Jeffrey H. Birnbaum and Alan S. Murray, *Showdown at Gucci Gulch: Lawmakers, Lobbyists, and the Unlikely Triumph of Tax Reform* (New York. Vintage, 1987).
15. See Paul C. Light, *Forging Legislation* (New York: Norton, 1992).
16. The Court's decision-making process remains one of the mysteries of Washington. Whatever insights we have into the process come from the recollections of law clerks and others who served the justices. The only popular effort to understand what takes place inside the Court was Bob Woodward

and Scott Armstrong, *The Brethren: Inside the Supreme Court* (New York: Simon and Schuster, 1979).

17. See John M. Logsdon, *The Decision to Go to the Moon: Project Apollo and the National Interest* (Chicago: University of Chicago Press, 1970).
18. For more on the early history of economic policy in the United States, see Carl Bridenbaugh, *Cities in the Wilderness: The First Century of Urban Life in America, 1625–1672* (New York: Knopf, 1964); Gerald D. Nash, *State Government and Economic Development: A History of Administrative Policies in California, 1849–1933* (Berkeley, Calif.: Institute of Governmental Studies, 1964), pp. 10–26; and Stuart Bruchey, *The Roots of American Economic Growth, 1607–1861; An Essay in Social Causation* (New York: Harper and Row, 1965). For an interesting study of Jefferson's views, see Frank Bourgin, *The Great Challenge: The Myth of Laissez-Faire in the Early Republic* (New York: George Braziller, 1989), chaps. 7 and 8.
19. For insight into the importance of the policymaking process at the Fed, see William Greider, *Secrets of the Temple: How the Federal Reserve Runs the Country* (New York: Simon and Schuster, 1987).
20. Arthur M. Okun, *The Political Economy of Prosperity* (New York: Norton, 1970), p. 37; see also Stein.
21. See Alan S. Blinder, *Economic Policy and the Great Stagflation* (New York: Academic Press, 1981). Also see William A. Lovett, *Inflation and Politics: Fiscal, Monetary, and Wage-Price Discipline* (Lexington, Mass.: Lexington Books, 1982).
22. The idea of an emerging "new economy" is most often attributed to management theorist Peter F. Drucker. See his *The New Realities: In Government and Politics / In Economics and Business / In Society and World View* (New York, Harper and Row, 1989) and Management Challenges for the 21st Century (New York: HarperBusiness, 1999).
23. For a readable and stimulating overview of the national debt issue, see Donald Kettl, *Deficit Politics* (New York: Macmillan, 1992); see also David P. Calleo, *The Bankrupting of America: How the Federal Budget Is Impoverishing the Nation* (New York: William Morrow, 1992).
24. See Calleo.
25. Data on outstanding sectoral debt is issued by the Federal Reserve System in its "Flow of Funds Accounts of the United States," issued annually. These can be found at http://www.federalreserve.gov/RELEASES/Z1/.
26. A growing number of analysts contend that, although there is nothing inherently wrong with a national debt, it should be tolerated only if the indebtedness is targeted toward socially and economically beneficial "investments." See Benjamin M. Friedman, *Day of Reckoning: The Consequences of American Economic Policy Under Reagan and After* (New York: Random House, 1988).
27. See Ed Gillespie and Bob Schellhas, *Contract With America* (New York: Times Books, 1994).
28. See I. M. Destler, *American Trade Politics: System Under Stress* (Washington, D.C.: Institute for International Economics, 1986).
29. *Statistical Abstract of the United States, 1989* (Washington, D.C.: U.S. Government Printing Office, 1989), tbs. 1354, 1356.
30. One of the vigilant opponents was the Ralph Nader Public Citizen group, which continues to monitor the treaty's implementation and impact. See the group's web site at http://www.tradewatch.org/.
31. For information on the World Trade Organization, visit its web site at http://www.wto.org/wto/.
32. The act also provided for regulation of grain elevators. Later the Interstate Commerce Commission was given jurisdiction over other forms of interstate transport, such as trucks, water carriers, and buses.
33. For information on antitrust activity, visit the web sites of the two federal agencies that do most of the enforcement in this area: the Federal Trade Commission (at http://www.ftc.gov/ftc/antitrust.htm) and the Antitrust Division of the Department of Justice (at http://www.usdoj.gov/atr/overview.html).
34. See Louis M. Kohlmeier, Jr., *The Regulators: Watchdog Agencies and the Public Interest* (New York: Harper and Row, 1969).
35. Larry H. Gerston, Cynthia Fraleigh, and Robert Schwab, *The Deregulated Society* (Pacific Grove, Calif.: Brooks/Cole, 1988); see also George C. Eads and Michael Fix, eds., *The Reagan Regulatory Strategy: An Assessment* (Washington, D.C.: The Urban Institute, 1984); and Roger C. Noll and Bruce M. Owen, eds., *The Political Economy of*

Deregulation: Interest Groups and the Regulatory Process (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1983).

36. Susan J. Tolchin and Martin Tolchin, Dismantling America: *The Rush to Deregulate* (Boston: Houghton Mifflin, 1983).
37. See Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, Mass.: Belknap/Harvard, 1992). See also Sidney Fine, *Laissez Faire and the General Welfare State: A Study in Conflict in American Thought, 1865–1901* (Ann Arbor, Mich.: Ann Arbor Paperbacks, 1969), pp. 22–23, 360–361; Clarke A. Chambers, *Seedtime of Reform: American Social Service and Social Action, 1918–1933* (Ann Arbor, Mich.: Ann Arbor Paperbacks, 1963); and Robert Morris, *Social Policy of the American Welfare State: An Introduction to Policy Analysis,* 2nd ed. (New York: Longman, 1985).
38. For a general discussion of contemporary social welfare policy, see Theodore R. Marmor, Jerry L. Mashaw, and Philip L. Harvey, *America's Misunderstood Welfare State: Persistent Myths, Enduring Realities* (New York: Basic Books, 1990).
39. In recent years, growing attention has been given to what some analysts term "corporate welfare" programs. These are programs that subsidize the activities of America's large corporations and can be associated with industrial policies discussed in the previous section on economic policies. The issue of corporate welfare made it onto the national agenda in late 1994 when Secretary of Labor Robert Reich gave a speech focusing attention on such programs. The Clinton White House quickly distanced itself from such talk.

    In 1997, however, a bipartisan and ideologically diverse coalition—including Ralph Nader and the National Taxpayers Union—joined forces with members of Congress to pursue an end to "corporate welfare." The Nader group, Public Citizen, maintains a web site monitoring corporate welfare at http://www.citizen. org/congress/corwel/. The CATO Institute, a libertarian-oriented think tank, has also adopted corporate welfare as an issue; see the congressional testimony of Stephen Moore posted at http://www.cato.org/testimony/ct-sm063099.html.
40. For an overview of the "old" welfare system, see Thomas E. Patterson, *America's Struggle Against Poverty, 1900–1980* (Cambridge, Mass.: Harvard University Press, 1981); U.S. House of Representatives, Committee on Ways and Means, *Overview of Entitlement Programs: 1994 Green Book* (Washington, D.C.: U.S. Government Printing Office, July 15, 1994); and Marmor, Mashaw, and Harvey.
41. See Charles Murray, *Losing Ground: American Social Policy, 1950–1980* (New York: Basic Books, 1984). See also Nathan Glazer, *The Limits of Social Policy* (Cambridge, Mass.: Harvard University Press, 1988). For a counterargument, refer to John E. Schwarz, *America's Hidden Success: A Reassessment of Twenty Years of Public Policy* (New York: Norton, 1983). See also William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* (Chicago: University of Chicago Press, 1987).
42. For a comparison of the old and new welfare policies, go to http://aspe.os.dhhs.gov/hsp/isp/reform.htm. The U.S. Department of Health and Human Services (HHS) intermittently issues updates on the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; see http://www.hhs.gov/news/press/1999pres/991204a.html. A major source for information on social welfare programs is the "*Green Book*" issued every other year by HHS; the *1998 Green Book* is found at http://aspe.hhs.gov/98gb/ intro.htm. The National Conference of State Legislatures also provides constant updates at its web site; see http://www.ncsl. org/statefed/WELFARE/welfare.htm.
43. For initial analyses and assessments of the 1996 reforms, see Sanford F. Schram and Samuel H. Beer, eds., *Welfare Reform: A Race to the Bottom?* (Washington, D.C.: Woodrow Wilson Center Press, 1999). Also see John D. Donahue, *Hazardous Crosscurrents: Confronting Inequality in an Era of Devolution* (New York, Century Foundation Press, 1999), especially chap. 6. The Planning and Evaluation Office at HHS is constantly evaluating the reforms; see its reports posted at http://aspe.os.dhhs.gov/.
44. For a general survey of social insurance programs, see Arnold J. Heidenheimer, Hugh Heclo, and Carolyn Teich Adams, *Comparative Public Policy: The Politics of Social Choice in Europe and America,* 3rd ed. (New York: St. Martin's, 1990), chap. 7. Also see the SSA publication, "*Social Security*

Programs Throughout the World," which can be found at http://www.ssa.gov/statistics/ssptw/index.html.
45. For an overview of these and other programs administered by SSA, see http://www.ssa.gov/statistics/sspus.html.
46. Data on enrollments and financing for Social Security programs can be found at http: // www.ssa.gov/statistics/Supplement/index.html.
47. On the politics of dealing with that crisis, see Paul Light, *Artful Work: The Politics of Social Security Reform* (New York: Random House, 1985).
48. The Concord Coalition has posted its assessments of Social Security, as well as its proposals for reform: http://www.concordcoalition.org/socialsecurity/index.html.
49. See Max J. Skidmore, Social Security and Its Enemies: *The Case for America's Most Efficient Insurance Program* (Boulder, Colo., Westview Press, 1999). For the latest projections of trust fund solvency, see the annual Trustees Report, posted at http://www.ssa.gov/OACT/TR/.
50. Much of the discussion in this section relies on Kenneth J. Meier, E. Thomas Garman, and Lael R. Keiser,. *Regulation and Consumer Protection: Politics, Bureaucracy and Economics,* 3rd ed. (Houston, Tex.: Dame Publications, 1998).
51. See Richard A. Harris and Sidney M. Milkis, *The Politics of Regulatory Change: A Tale of Two Agencies* (New York: Oxford University Press, 1989).
52. Murray L. Weidenbaum, *Business, Government, and the Public,* 6th ed. (Upper Saddle River, NJ.: Prentice-Hall, 1999).
53. For a discussion of the opposite view—that government may be a necessary good—see Wills, chap. 24.

Chapter 15

Foreign and Defense Policy, pp. 423–459

1. James Chace and Caleb Carr, *America Invulnerable: The Quest for Absolute Security from 1812 to Star Wars* (New York: Summit Books, 1988), p. 12.
2. See Michael Nacht, *The Age of Vulnerability: Threats to the Nuclear Stalemate* (Washington, D.C.: The Brookings Institution, 1985).
3. Michael E. Porter, *The Competitive Advantage of Nations* (New York: Free Press, 1990), p. 306.
4. See Richard Rosecrance, *The Rise of the Trading State: Commerce and Conquest in the Modern World* (New York: Basic Books, 1986); also Roy Hofheinz, Jr., and Kent E. Calder, The Eastasia Edge (New York: Basic Books, 1982).
5. Clyde V. Prestowitz, Jr., *Trading Places: How We Are Giving Our Future to Japan and How to Reclaim It* (New York: Basic Books, 1989), p. 93.
6. Chace and Carr, chaps. 2 and 3.
7. Ibid., chap. 4.
8. The policy of containment is most closely associated with George F. Kennan, an American diplomat and scholar who was very influential in shaping U.S. strategies during the Cold War. See his *American Diplomacy, 1900–1950* (New York: Mentor Books, 1951).
9. See Stephen E. Ambrose, *Rise to Globalism: American Foreign Policy Since 1938* (Baltimore, Md.: Penguin Books, 1971), pp. 174–175.
10. For a history of the Vietnam conflict, see Stanley Karnow, *Vietnam: A History* (New York: Penguin Books, 1983).
11. Henry Kissinger, *Years of Upheaval* (Boston: Little, Brown, 1982), pp. 235–246, 339.
12. Ibid., p. 50.
13. Ibid.
14. See Congressional Quarterly, *U.S. Foreign Policy: The Reagan Imprint* (Washington, D.C.: Congressional Quarterly Press, 1986).
15. See R. W. Apple, Jr., "Poll Finds That Gorbachev's Rule Eases American Minds on Soviets," *New York Times,* May 16, 1989, pp. A1, A10.
16. This summary of Bush administration strategy was drawn primarily from public presentations and related documents presented by the Department of Defense during March 1992.
17. I. M. Destler, "Foreign Policy Making with Economy at Center Stage," in *Beyond the Beltway: Engaging the Public in U.S. Foreign Policy,* ed. Daniel Yankelovich and I. M. Destler (New York: Norton, 1994), pp. 26–42.
18. President's Commission on Industrial Competitiveness, *Global Competition: The New Reality* (Washington, D.C.: U.S. Government Printing Office, 1985), p. 1.
19. For an assessment of the factors that made the Clinton presidency different, see Donald M. Snow

and Eugene Brown, *United States Foreign Policy: Politics Beyond the Water's Edge* (Boston: Bedford/St. Martin's, 2000), pp. 124–130.

20. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government, Fiscal Year 1995* (Washington, D.C.: U.S. Government Printing Office, 1994), pp. 213–217.
21. Snow and Brown, chap. 11. Also see Maryann K. Cusimano, ed., *Beyond Sovereignty: Readings for a Global Agenda* (New York: Worth, 1998).
22. Madeleine K. Albright, "The Testing of American Foreign Policy," *Foreign Affairs* 77, No. 6 (November/December 1998), 50–64.
23. For an initial assessment of the changes taking place in U.S. foreign policymaking, see Arnold Kanter, "Adapting the Executive Branch to the Post–Cold War World," in *Beyond the Beltway,* pp. 131–154.
24. See Edward S. Corwin, *The President: Office and Powers, 1787–1857* (New York: New York University Press, 1957), chap. 5.
25. For an interesting and readable introduction to the operations of the defense bureaucracy under the Bush administration, see Bob Woodward, *The Commanders* (New York: Simon and Schuster, 1991). You can gain some insight into the operations of the Defense Department by visiting its public web site, www.defenselink.mil.
26. See Steve Dryden, *Trade Warriors: USTR and the American Crusade for Free Trade* (New York: Oxford University Press, 1995).
27. Corwin, p. 171 (emphasis in original).
28. See Norman J. Ornstein, "The Constitution and the Sharing of Foreign Policy Responsibility," in *The President, the Congress, and Foreign Policy,* ed. Edmund S. Muskie, Kenneth Rush, and Kenneth W. Thompson (Lanham, Md.: University Press of America, 1986), pp. 35–66.
29. From its final passage to the end of the Reagan administration, there were twenty-five instances when provisions of the act might have applied, and in only fifteen did the White House bother to submit a formal report to Congress as required by the act. See Barbara Hinckley, *Less Than Meets the Eye: Foreign Policy Making and the Myth of the Assertive Congress* (Chicago: University of Chicago Press, 1994), pp. 84–92.
30. G. Calvin Mackenzie, "Resolving Policy Differences: Foreign Aid and Human Rights," in *Who Makes Public Policy? The Struggle for Control Between Congress and the Executive,* ed. Robert S. Gilmour and Alexis A. Halley (Chatham, N.J.: Chatham House, 1994), pp. 261–288.
31. These and other congressional restrictions on Reagan's policies toward Nicaragua eventually led members of the Reagan administration to develop alternative—and legally questionable—means for funding the rebel forces. The resulting scandal became known as the Iran-Contra affair. See Theodore Draper, *A Very Thin Line: The Iran-Contra Affairs* (New York: Simon and Schuster, 1991).
32. Ibid.
33. See Hinckley.
34. Quoted in James A. Nathan and James K. Oliver, *Foreign Policy Making and the American Political System,* 3rd ed. (Baltimore, Md.: Johns Hopkins University Press, 1994), p. 174.
35. See Stephen Ansolabehere, Roy Behr, and Shanto Iyengar, *The Media Game: American Politics in the Television Age* (New York: Macmillan, 1993), pp. 195–202.
36. The media strategy used by Clinton was very similar to that used by Reagan to set the stage for his invasion of Grenada in 1983. See Ansolabehere, Behr, and Iyengar, pp. 195–197.
37. Stephen Rosenfeld, quoted in Nathan and Oliver, p. 186.
38. Pat Choate, *Agents of Influence* (New York: Touchstone/Simon and Schuster, 1990).
39. See Harold H. Saunders, "The Middle East, 1973–84: Hidden Agendas," in *The President, the Congress, and Foreign Policy,* ed. Muskie et al., chap. 7. Also see Nathan and Oliver, pp. 199–204.
40. See Gabriel A. Almond, *The American People and Foreign Policy* (New York: Praeger, 1960). Many advocates of the "mood theory" approach tend to regard the American public's opinions as "fickle and undependable." For a contrasting view, see Benjamin I. Page and Robert Y. Shapiro, *The Rational Public: Fifty Years of Trends in Americans' Policy Preferences* (Chicago: University of Chicago Press, 1992), chap. 5.
41. See Theodore J. Lowi, *The Personal President: Power Invested, Promise Unfulfilled* (Ithaca, N.Y.: Cornell University Press, 1985), pp. 170–173.

42. The mood theory concept was originally articulated by Frank L. Klingberg. See Jack E. Holmes, *The Mood/Interest Theory of American Foreign Policy* (Lexington: University Press of Kentucky, 1985).
43. Bruce Russett and Donald R. DeLuca, "'Don't Tread on Me,' Public Opinion and Foreign Policy in the Eighties," *Political Science Quarterly,* 96, No. 3 (Fall 1981), 381–387; also Congressional Quarterly, *U.S. Foreign Policy: The Reagan Imprint.*
44. Buchanan did win the New Hampshire primary in 1996 against Robert Dole, but he was unable to sustain his isolationist campaign for long after that. In the 2000 campaign, Buchanan dropped out of the Republican race early and sought the nomination of the Reform party.
45. See Daniel Yankelovich and John Immerwahr, "The Rules of Public Engagement," in *Beyond the Beltway,* pp. 43–77. Every other year the Chicago Council on Foreign Relations issues a report on American public opinion regarding foreign affairs and foreign policy issues. The 1999 report can be found at http://www.ccfr.org/publications/opinion/opinion.html.
46. In his 1985 State of the Union address, Reagan equated this aid with defense rather than diplomacy. He argued that "dollar for dollar, our security assistance contributes as much to global security as our own defense budget." See Congressional Quarterly, *U.S. Foreign Policy: The Reagan Imprint.*
47. John Tower et al., *The Tower Commission Report: The Full Text of the President's Special Review Board* (New York: Bantam/Times Books, 1987), p. 15.
48. See Gerald F. Seib, "Prodded by Quayle and Cheney, Bush Becomes Fervent Supporter of Strategic Defense Initiative," *Wall Street Journal,* February 23, 1990, p. A12.
49. Jeff Shear, "The Numbers Crunch," *National Journal* (September 24, 1994), 2213–2216.
50. This reluctance comes through quite clearly in the views of military leaders expressed in Woodward's *The Commanders.*
51. See Chace and Carr.
52. Much of what follows reflects presentations made by Bush administration officials during March and April 1992.
53. For a statement of U.S. military and defense strategy, see the 1997 *Report of the Quadrennial Defense Review,* posted at http://www.defenselink.mil/pubs/qdr/.

Suggested Readings

Chapter 1

Myth and Reality in American Politics, pp. 1–23

de Grazia, Sebastian. *A Country with No Name: Tales from the Constitution.* New York: Pantheon Books, 1997. An interesting and very unusual exercise in using myth and storytelling to deal with the issue of what it means to be an American.

Dionne, E. J., Jr. *Why Americans Hate Politics.* New York: Simon and Schuster, 1991. This popular analysis of American politics in the 1980s argues that America's negative attitudes toward politics are rooted in the irrelevance of the mainstream political ideologies of liberalism and conservatism to the changing realities of America's problems. In the process of making this argument, Dionne offers key insights into the tenets of American ideas and their role in politics.

Hofstadter, Richard. *The Paranoid Style in American Politics and Other Essays.* New York: Vintage Books, 1967. A noted historian's classic statement of the role conspiracy theories have played in American politics.

Medcalf, Linda J., and Kenneth M. Dolbeare. *American Ideologies Today: Shaping the New Politics of the 1990's,* 2nd ed. New York: McGraw-Hill, 1992. A brief history of political ideology in the United States with clear explanations and applications to contemporary politics.

Parenti, Michael. *Land of Idols: Political Mythology in America.* New York: St. Martin's, 1994. A distinctly more radical approach to the study of American politics that relies on the myths that permeate our political system.

Putnam, Robert D. *Bowling Alone: The Collapse and Revival of American Community.* New York: Simon and Schuster, 2000. Putnam argues that we have suffered from a decline in "social capital" over the past two or three decades, and that this has led to greater distrust generally.

Robertson, James Oliver. *American Myth, American Reality.* New York: Hill and Wang, 1980. A survey of myths held by Americans, including many related to government. The author explores the importance of myth in shaping the American past and present.

Tinder, Glenn. *Political Thinking: The Perennial Questions,* 6th ed. Boston: Addison-Wesley, 1995. A brief but concise examination and statement of the perennial philosophical and political questions raised in the Western intellectual tradition.

Wills, Garry. *A Necessary Evil: A History of American Distrust of Government.* New York: Simon and Schuster, 1999. Wills argues that distrust of government has deep roots in the American political culture and is sustained by a number of historical myths and distortions.

Chapter 2

Constitutional Foundations, pp. 24–59

Ackerman, Bruce. *We the People.* Vol. 1, *Foundations.* Cambridge, Mass.: Belknap Press, 1991. Also *We the People, II: Transformations.* Vol. 2. Cambridge, Mass.: Belknap Press, 1998. A fresh interpretation of American constitutionalism that focuses on the uniqueness of the historical evolution of the U.S. system.

Bradford, M. E. *Founding Fathers: Brief Lives of the Framers of the United States Constitution,* 2nd ed. Lawrence: University Press of Kansas, 1994. A classic collection of short biographies that provides some insights into the framers' backgrounds and personalities.

Cooke, Jacob E., ed. *The Federalist.* Middletown, Conn.: Wesleyan University Press, 1961. A complete collection of these important papers that have played a major role in our understanding of what the framers meant when they wrote the Constitution.

DePauw, Linda Grant. *Founding Mothers: Women of America in the Revolutionary Era.* Boston: Houghton Mifflin, 1975. An overview of the role of women in the social, economic, and political atmosphere that preceded the writing of the Constitution.

Diamond, Martin. *The Founding of the Democratic Republic.* Itasca, Ill.: F. E. Peacock, 1981. A clear presentation of the issues and ideas that influenced the framers of the Constitution.

Elkins, Stanley, and Eric McKitrick. *The Age of Federalism: The Early American Republic, 1788–1800.* New York: Oxford University Press, 1993. What was it like to live under the new Constitution during its first twelve years? These two noted historians attempt to answer that question.

Farrand, Max. *The Framing of the Constitution of the United States.* New Haven, Conn.: Yale University Press, 1913. A classic study, describing the people and debates at the Constitutional Convention.

Ferris, Robert G., and James H. Charleton. *The Signers of the Constitution.* Flagstaff, Ariz.: Interpretive Publications, 1986. A well-written overview of the convention and its participants by two National Park Service historians who provide interesting insights and visual displays to bring the story of the Constitutional Convention to life.

Levinson, Sanford. *Constitutional Faith.* Princeton, N.J.: Princeton University Press, 1988. An insightful analysis of the "civil religion" that has developed around the American Constitution.

Maier, Pauline. *American Scripture: Making the Declaration of Independence.* New York: Alfred A. Knopf, 1997. A historian's study of the Declaration and the political setting in which it was written. She also addresses the emergence of the Declaration of Independence as a moral force in American politics during the nineteenth century.

McDonald, Forrest. *Novus Ordo Seclorum: The Intellectual Origins of the Constitution.* Lawrence: University Press of Kansas, 1985. An intellectual history of the work of the framers by one of America's leading authorities on the founding of the republic.

Posner, Richard A. *An Affair of State: The Investigation, Impeachment, and Trial of President Clinton.* Cambridge, Mass.: Harvard University Press, 1999. Of the many books to emerge from the Clinton impeachment episode, this is generally cited as the most thoughtful in terms of the issues raised at the trial.

Rakove, Jack N., ed. *Interpreting the Constitution: The Debate Over Original Intent.* Boston: Northeastern University Press, 1990. A collection of essays providing various perspectives on the doctrine of "originalism," i.e., whether interpretations of the Constitution should rely on the framers' intentions rather than adapting them to suit modern needs.

Sunstein, Cass R. *The Partial Constitution.* Cambridge, Mass.: Harvard University Press, 1993. A critical analysis of contemporary constitutional law and its reliance on "status quo neutrality" rather than impartiality. This is a critical source for anyone interested in issues surrounding the "rule of law" principle.

Wood, Gordon S. *The Creation of the American Republic, 1776–1787.* New York: W. W. Norton, 1969. A groundbreaking study of the issues, politics, and ideas during a tumultuous period that set the stage for the writing of the U.S. Constitution.

Chapter 3

Federalism and Intergovernmental Relations, pp. 60–88

Bowman, Ann O'M., and Richard C. Kearney. *State and Local Government.* 4th ed. Boston: Houghton Mifflin, 1999.

Bowman, Ann O'M., and Richard C. Kearney. *The Resurgence of the States.* Englewood Cliffs, N.J.: Prentice-Hall, 1986. A survey of the increasingly important role played by the states in the American federal system, with emphasis on the growing influence of governors, state legislatures, and other state institutions.

Davis, S. Rufus. *The Federal Principle: A Journey Through Time in Quest of Meaning.* Berkeley, Calif.: University of California Press, 1978. A classic survey of the meaning of federalism as a constitutional and political concept in Western civilization. Focuses on the historical emergence of federalism in the United States.

Donahue, John D. *Disunited States.* New York: Basic Books, 1997. A critical assessment of "devolution" and its implications for American government.

O'Toole, Laurence J. *American Intergovernmental Relations: Foundations, Perspectives, and Issues,* 3rd ed. Washington, D.C.: Congressional Quarterly Press, 1999. A collection of readings focused on various issues associated with contemporary federal-state relations.

Rivlin, Alice M. *Reviving the American Dream: The Economy, the States, and the Federal Government.* Washington, D.C.: The Brookings Institution, 1992.

In a refreshing look at the burdens of public policy, Rivlin concludes that the national government is doing too much and must defer much more to the states. Rivlin's views became particularly important when President Bill Clinton appointed her deputy director, and then director, of the Office of Management and Budget.

Van Horn, Carl E., ed. *The State of the States,* 2nd ed. Washington, D.C.: CQ Press, 1993. A collection of essays that addresses the increasing role and capacities of state government and officials in the 1990s.

Walker, David B. *The Rebirth of Federalism: Slouching Toward Washington.* Chatham, N.J.: Chatham House, 1995. An overview of the changing nature of American federalism from one of the country's leading students of intergovernmental relations.

Wright, Deil S. *Understanding Intergovernmental Relations,* 3rd ed. Monterey, Calif.: Brooks/Cole, 1988. A comprehensive survey of the research in and issues of U.S. intergovernmental relations.

Chapter 4

The Heritage of Rights and Liberties, pp. 89–125

Abraham, Henry J., and Barbara A. Perry. *Freedom and the Court,* 7th ed. New York: Oxford University Press, 1998. A carefully documented analysis of Supreme Court civil rights and civil liberties decisions.

Alderman, Ellen, and Caroline Kennedy. *In Our Defense: The Bill of Rights in Action.* New York: Avon Books, 1991. Written for the layperson, this book provides vivid accounts of major cases invoking the Bill of Rights.

Cleary, Edward J. *Beyond the Burning Cross: A Landmark Case of Race, Censorship, and the First Amendment.* New York: Vintage Books, 1995. A first-person account by the lawyer who successfully challenged the St. Paul, Minnesota, hate crime ordinance.

Ducat, Craig R.. *Constitutional Interpretation,* 7th ed. St. Paul, Minn.: West, 2000. A comprehensive history and commentary on judicial enforcement of civil liberties and rights.

Kluger, Richard. *Simple Justice.* New York: Knopf, 1975. A complete account of the legal and political setting of the Supreme Court's decision in *Brown* v. *Board of Education.*

Mezey, Susan Gluck. *In Pursuit of Equality: Women, Public Policy, and the Federal Courts.* New York: St. Martin's, 1992. The author provides a well-written and comprehensive account of court interpretations of the issues regarding sex discrimination.

Polenberg, Richard. *Fighting Faiths: The Abrams Case, the Supreme Court, and Free Speech.* New York: Viking, 1988. An informative examination of an important free-speech case.

Weinstein, James. *Hate Speech, Pornography, and the Radical Attack on Free Speech Doctrine.* Boulder, Colo.: Westview Press, 1999. A provocative assessment of hate speech laws and restrictions on pornography.

Chapter 5

Public Opinion and Political Participation, pp. 126–151

Asher, Herbert. *Polling and the Public: What Every Citizen Should Know,* 3rd ed. Washington, D.C.: CQ Press, 1995. A highly useful text explaining polling and survey methods.

Conway, M. Margaret. *Political Participation in the United States,* 2nd ed. Washington, D.C.: CQ Press, 1991. A well-crafted and readable study of political participation in the United States.

Conway, M. Margaret, Gertrude A. Steuernagel, and David W. Ahern. *Women and Political Participation.* Washington, D.C.: CQ Press, 1997. A study and analysis of participation by women in the political system.

Delli Carpini, Michael X., and Scott Keeter. *What Americans Know About Politics and Why It Matters.* New Haven, Conn.: Yale University Press, 1996. An excellent comprehensive analysis of the public's knowledge and understanding of American politics.

Erikson, Robert S., and Kent L. Tedin. *American Public Opinion: Its Origins, Content, and Impact,* 5th ed. Boston: Allyn and Bacon, 1995. A readable text covering the formation of public opinion in a democratic system.

Glynn, Carroll J., Susan Herbst, Garrett J. O'Keefe, and Robert Y. Shapiro. *Public Opinion.* Boulder, Colo.: Westview Press, 1999. A comprehensive book covering history, methods, and theories of public opinion as well as public opinion and policymaking.

Chapter 6

Political Parties, pp. 152–176

Bibby, John F., *Politics, Parties, and Elections in America*, 4th ed. Belmont, Calif.: Wadsworth, 2000. A textbook overview of the structure and functions of political parties in the United States, with an emphasis on the role of parties in elections.

Green, John C., and Daniel M. Shea, eds. *The State of the Parties*. Lanham, Md.: Rowman and Littlefield, 1999. A selection of essays about the condition and future of American parties at the national, state, and local levels.

Keefe, William J. *Parties, Politics, and Public Policy in America*, 8th ed. Washington, D.C.: CQ Press, 1998. A textbook overview of the role of political parties and their impact on public policy.

Maisel, L. Sandy, ed. *The Parties Respond: Changes in American Parties and Campaigns*, 3rd ed. Boulder, Colo.: Westview Press, 1998. A collection of essays on the present status of political parties.

Riordon, William L. *Plunkett of Tammany Hall*. New York: Dutton, 1963. An entertaining story of an infamous member of the legendary Tammany Hall political machine in New York City.

Chapter 7

Campaigns and Elections, pp. 177–209

Abramson, Paul R., John H. Aldrich, and David W. Rohde. *Change and Continuity in the 1996 and 1998 Elections*. Washington, D.C.: CQ Press, 1999. A comprehensive review and analysis of the 1996 and 1998 elections.

Corrado, Anthony, Thomas Mann, Daniel R. Ortiz, Trevor Potter, and Frank J. Sorauf, eds. *Campaign Finance Reform: A Source Book*. Washington, D.C.: The Brookings Institution, 1997. As the title indicates, this is a valuable compilation of essays, laws, and judicial decisions covering federal campaign finance reform.

Fowler, Linda L., and Robert D. McClure. *Political Ambition: Who Decides to Run for Congress?* New Haven, Conn.: Yale University Press, 1990. An excellent and readable study of how and why each of a group of individuals sought the party nomination to run for a seat in the U.S. House of Representatives. This book introduces the reader to the relevance of political ambition in choosing to campaign for political office.

Herrnson, Paul S. *Congressional Elections: Campaigns at Home and in Washington*, 2nd ed. Washington, D.C.: CQ Press, 1998. A very good examination of the campaign process as it applies to running for Congress.

Chapter 8

Interest Groups, pp. 210–233

Berry, Jeffrey M. *The Interest Group Society*, 3rd ed. New York: Longman, 1997. A well-written examination of how interest groups operate within the context of democratic theory.

Cigler, Allan J., and Burdett A. Loomis, eds. *Interest Group Politics*, 5th ed. Washington, D.C.: CQ Press, 1997. An excellent collection of essays focusing on the many sides of interest groups and lobbying in the United States.

Costain, Anne N. *Inviting Women's Rebellion*. Baltimore, Md.: Johns Hopkins University Press, 1992. An examination of the evolution of the women's movement in the United States.

Herrnson, Paul S., Ronald G. Shaiko, and Clyde Wilcox, eds. *The Interest Group Connection*. Chatham, N.J.: Chatham House Publishers, 1998. A concise set of essays covering the interaction of lobbying, electioneering, and policymaking in Washington, D.C.

Chapter 9

Media and Politics, pp. 234–256

Ansolabehere, Stephen, Roy Behr, and Shanto Iyengar. *The Media Game: American Politics in the Television Age*. New York: Macmillan, 1993. Combining survey data and experimental results, the authors document the effects of television on politicians and voters. In this highly readable and up-to-date work, the authors provide a comprehensive guide to this complex subject.

Fallows, James. *Breaking the News: How the Media Undermine American Democracy*. New York: Pantheon Books, 1996. A member of the press critiques his own profession, accusing the media of destroying democracy.

Gianos, Phillip L. *Politics and Politicians in American Film*. Part history of the American film industry,

part social commentary, this book examines the ways in which politics and politicians have been portrayed in American films.

Hess, Stephen. *The Government/Press Connection: Press Officers and Their Offices.* Washington, D.C.: The Brookings Institution, 1984. An examination of the production of news about government by the government itself. The author discusses the organization and staffing of government press offices and details how press briefings are prepared and conducted.

Kovach, Bill, and Tom Rosenstiel. *Warp Speed: America in the Age of Mixed Media.* New York: The Century Fund Foundation Press, 1999. Although they focus specifically on the coverage of the President Clinton–Monica Lewinsky scandal, the authors illustrate how the new media, with their 24-hour news cycle, have influenced the standards of reporting.

Paletz, David L. *The Media in American Politics: Contents and Consequences.* New York: Addison Wesley Longman, 1999. Combining an analysis of the news media with a witty review of popular culture, the author explains the consequences of the media's content.

Patterson, Thomas E. *Out of Order.* New York: Alfred A. Knopf, 1993. A well-researched and provocative discussion of the role of the media in presidential elections. The author argues that the press, in taking over the functions of the political parties, has distorted the election process and poorly serves the public.

West, Darrell M. *Air Wars: Television Advertising in Election Campaigns, 1952–1992.* Washington, D.C.: Congressional Quarterly Press, 1993. An informative history of the use of television ads in American elections. The author examines the effects of paid advertising on citizen awareness and democracy.

Chapter 10

Congress, pp. 257–284

Conlan, Timothy J., Margaret T. Wrightson, and David R. Beam. *Taxing Choices: The Politics of Tax Reform.* Washington, D.C.: Congressional Quarterly Press, 1990. A well-written account of how the Tax Reform Act of 1986 became law. The authors draw on more than fifty interviews to illuminate the congressional policymaking process.

Cox, Gary, and Matthew D. McCubbins. *Legislative Leviathan: Party Government in the House.* Berkeley, Calif.: University of California Press, 1993. The authors argue that observers of Congress have seriously underestimated the importance of political parties in the workings of the House of Representatives.

Davidson, Roger H., and Walter J. Oleszek. *Congress and Its Members,* 7th ed. Washington, D.C.: Congressional Quarterly Press, 1999. A comprehensive explanation of the workings of Congress. Throughout the book, the authors emphasize the theme of the two Congresses.

Hibbing, John R., and Elizabeth Theiss-Morse. *Congress as Public Enemy: Public Attitudes Toward American Political Institutions.* Cambridge: Cambridge University Press, 1995. The authors argue that Americans hate Congress because it is so publicly democratic. Although the American people revere democracy in theory, they dislike it in practice.

Mezey, Michael L. *Congress, the President and Public Policy.* Boulder, Colo.: Westview Press, 1990. An engaging discussion of the interactions between the legislative and executive branches.

Smith, Steven S., and Christopher J. Deering. *Committees in Congress.* Washington, D.C.: Congressional Quarterly Books, 2000. A complete examination of the development and future of the committee systems in both houses of the U.S. Congress.

Chapter 11

The Presidency, pp. 285–317

Frendreis, John P., and Raymond Tatalovich. *The Modern Presidency and Economic Policy.* Itasca, Ill.: F. E. Peacock, 1994. An extensive discussion of the formulation of economic policy and the role played by presidents.

Jones, Charles O. *The Presidency in a Separated System.* Washington, D.C.: The Brookings Institution, 1994. Warning against viewing American government as presidential government, the author argues that the separated system created by the Constitution can and does work.

Kernell, Samuel. *Going Public: New Strategies of Presidential Leadership,* 3rd ed. Washington, D.C.: Congressional Quarterly Press, 1997. Through a careful analysis of existing data and an illuminating case study, the author convincingly argues that presidents have, over the last fifty years, replaced bargaining for policy outcomes with a style that emphasizes going directly to the people.

Neustadt, Richard E. *Presidential Power and the Modern President: The Politics of Leadership from Roosevelt to Reagan.* New York: The Free Press, 1990. A classic study of the elements of presidential power. The author argues that presidential power is the power to persuade and not the power to command.

Pfiffner, James P., and Roger H. Davidson, eds. *Understanding the Presidency.* New York: Longman, 2000. The editors have blended classic works on the presidency with current scholarship to provide a comprehensive portrait of the American presidency.

Rose, Richard. *The Postmodern President: George Bush Meets the World,* 2nd ed. Chatham, N.J.: Chatham House, 1991. A provocative account of presidential power in the modern era. The author contends that presidential power is greatly constrained by the need to cooperate with other nations in order to achieve economic and national security goals.

Skowronek, Stephen. *The Politics Presidents Make: Leadership from John Adams to Bill Clinton.* Cambridge, Mass.: Harvard University Press, 1997. The author argues that presidents are often agents of great change, but that they also inherit a political context that shapes their actions.

Chapter 12

Bureaucracy, pp. 318–354

Bozeman, Barry. *Bureaucracy and Red Tape.* Upper Saddle River, N.J.: Prentice-Hall, 2000. A fresh look at the issues surrounding bureaucratized government.

Dubnick, Melvin J., and Barbara S. Romzek. American *Public Administration: Politics and the Management of Expectations.* New York: Macmillan, 1991. An introduction to the study of public administration. The authors stress the role that public expectations play in shaping the work of American bureaucracies.

Goodsell, Charles T. *The Case for Bureaucracy: A Public Administration Polemic,* 3rd ed. Chatham, N.J.: Chatham House, 1994. A unique defense of bureaucracies that counters major criticisms of public administration with empirical evidence.

Kaufman, Herbert. *Red Tape: Its Origins, Uses, and Abuses.* Washington, D.C.: The Brookings Institution, 1977. A short, readable exploration of bureaucratic red tape and its sources, showing that much red tape is of our own making.

Light, Paul Charles. *The New Public Service.* Washington, D.C.: Brookings Institution Press, 1999. An examination of the changing careers of public service professionals.

Meier, Kenneth J. *Politics and the Bureaucracy: Policymaking in the Fourth Branch of Government,* 4th ed. Fort Worth, Tex.: Harcourt Brace, 1999. An overview of the federal bureaucracy as a policymaking institution.

Osborne, David, and Ted Gaebler. *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector.* Reading, Mass.: Addison-Wesley, 1992. A widely cited work proposing government reforms that foster entrepreneurial approaches in public administration. This work became the "bible" of the Clinton administration's National Performance Review effort.

Osborne, David, and Peter Plastrik. *Banishing Bureaucracy: The Five Strategies for Reinventing Government.* Reading, Mass.: Addison-Wesley, 1997. A sequel to Reinventing Government that focuses on how to implement entrepreneurial reforms.

Stillman, Richard Joseph. *Public Administration: Concepts and Cases,* 7th ed. Boston: Houghton Mifflin, 1999. A selection of readings and cases for anyone who wants to learn more about public administration and the bureaucracy.

Wilson, James Q. *Bureaucracy: What Government Agencies Do and Why They Do It.* New York: Basic Books, 1989. An overview of American bureaucracy that takes a bottom-up perspective and emphasizes the reasons why bureaucratic organizations behave the way they do.

Chapter 13

Courts, Judges, and the Law, pp. 355–384

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Appendix B: *Federalism*

Federalism

BASIC CONCEPTS

• The Meanings of Federalism • Federalism and its Alternatives • Federalists and Antifederalists • Models of Federalism • Federalism Under the Constitution •

A HISTORY OF FEDERALISM UNDER THE CONSTITUTION

• The Marshall Era and the Foundations of National Power • The Challenge to National Power • The Struggle for National Supremacy • Federalism Since the New Deal •

FEDERALISM TODAY: COOPERATION AND CONFLICT

• Primarily Local Functions • Shared Functions • Primarily Federal Functions •

DOES FEDERALISM MATTER?

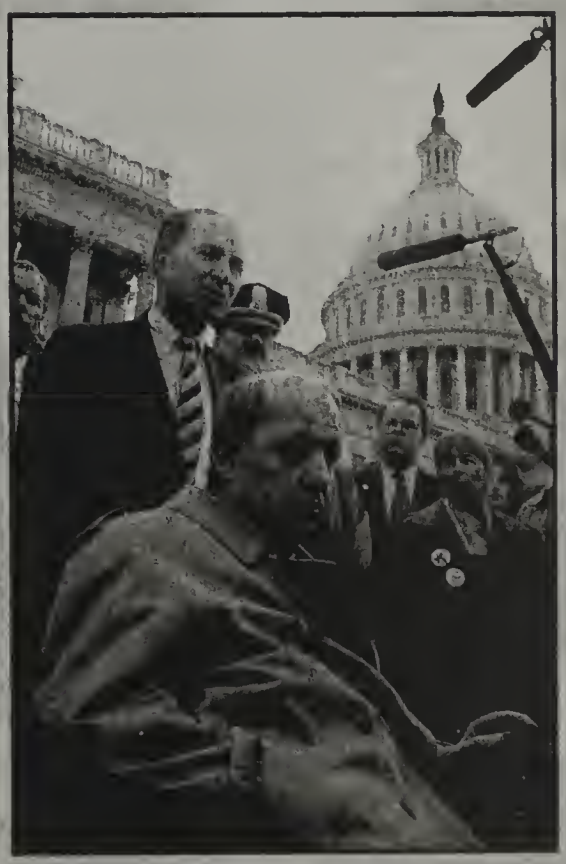
• Advantages of Federalism • Disadvantages of Federalism •

Can Congress force state and local officials to carry out the programs and policies of the national government? That was the question presented by two county sheriffs who challenged the Brady Handgun Violence Prevention Act, which required them (and other state and local law enforcement officials) to conduct routine "background checks" on would-be handgun purchasers. The sheriffs conceded that Congress could regulate the sale of handguns, but argued that the Constitution barred the national government from using state and local officials, without compensation, to achieve its objectives.

In the 1997 case of *Printz* v. *United States,* the Supreme Court agreed. Writing for a narrowly divided Court, Justice Antonin Scalia laid down the law in no uncertain terms. "The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program," he wrote. If the national government wants criminal background checks on prospective gun purchasers, Scalia concluded, it can do them itself; ask the states to cooperate voluntarily; or purchase compliance by paying the states for their services.

For Scalia and his colleagues in the majority, the national government's attempt to "commandeer" state and local officials into its service struck at the heart of the American principle of federalism, which divides power between the states and the national government. "Although the States surrendered many of their powers to the new Federal Government," Scalia concluded, they did not give up their independent existence or the ultimate power to control their own affairs.

The Court's opinion called forth a blistering dissent from Justice John Paul Stevens. "There is not a clause, sentence, or paragraph in the entire text of the Constitution of the United States that supports the proposition that a local police officer can ignore a command contained" in a valid congressional enactment, he wrote; for nearly two hundred years, the Constitution has been interpreted as allowing Congress the widest possible choice of means to achieve its legitimate ends. For Stevens, the bottom line was clear: "If Congress believes that such a statute will benefit



***James Brady, wounded in a 1981 assassination attempt against President Ronald Reagan, inspired the passage of the "Brady bill," which imposed federal controls on handguns—including the mandatory background check at issue in* Printz *v.* United States.**

the people of the Nation," the Court has no choice but to accept its judgment.[1]

The sharply contrasting opinions in the *Printz* case rekindled a long-standing debate on the appropriate relationship between the national government and the states. Finding the right balance between national and state power was the critical issue facing the Framers of the Constitution in 1787. The struggle over slavery, which led to the Civil War, was in large part a contest between the states and the national government. In this century, Washington has fought with the states over economic regulation, civil liberties, and civil rights.

Over the course of two hundred years, the national government has won most of its fights with the states. The course of American history reveals a clear shift of power from the states to the national government, especially in this century. Today the federal government exercises its influence in such diverse areas as labor relations, food and drug safety, environmental protection, money and banking, stock market regulation, and health policy—all areas that at one time were primarily the responsibility of the state governments. In other areas Washington plays an indirect role, by imposing conditions on grants of aid to the states.

The history of national-state relations in th United States is not simply about conflict, howeve From the beginning, the states have cooperated wit the national government and with each other in a wid variety of policy areas. Moreover, various aspects of th national system, especially the representation of stat in the Senate, have reinforced the close connections be tween the two levels of government. State and loc governments still maintain primary or shared respon sibility in areas such as education, law enforcement, l censing (of drivers, motor vehicles, doctors, and ha stylists, for example), and property law. In other are the state and national governments share responsibi ity, with neither dominant.

This chapter explores three themes. First, it trac the distribution of power between the states an the federal government from the founding perio until the present. Second, it discusses the relationsh between the national and state governments today, r vealing a complex picture of conflict, cooperation, an competition. Finally, it examines the advantages an disadvantages for self-government of dividing pow between the states and the national government.

Questions to Keep in Mind

- ***What was the Federalists' view of the proper balance between state and national power? How and why did they seek to achieve that balance? What was the Antifederalist view of the relationship between the states and the national government?***
- ***How has the relationship between the states and the national government changed over the course of American history? What factors have influenced the growth of national power over time?***
- ***What are the advantages and disadvantages of federalism? Of state-centered federalism versus nation-centered federalism?***

Basic Concepts ★★★★★★★★★★★★★

The Meanings of Federalism

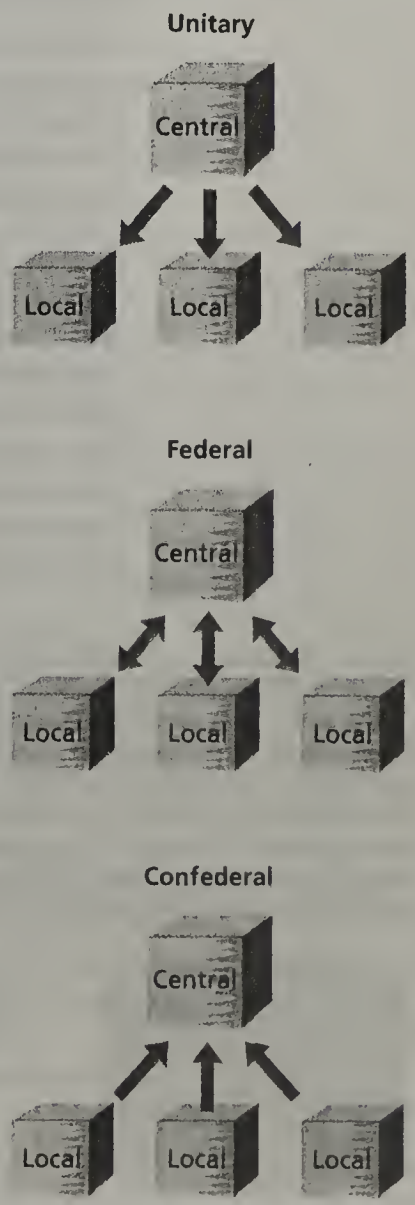
Few aspects of American government have been as controversial or as easily misunderstood as **federalism.** Confusion over the meaning of federalism and disagreement over its implications arose during the debate over the Constitution and have never ceased. To add to the problem, federalism in practice has never conformed precisely to any theoretical ideal.

Federalism and Its Alternatives

Federalism refers to a political system in which power is divided between the central government and its component parts—in the United States, between the national government and the states. Exactly how power should be divided, and how to resolve disputes over the distribution of power, are difficult questions. Because the answers to these questions vary, there are many different forms of federalism.

An alternative to federalism is a **unitary system,** in which all power is held by the central government. The opposite alternative is a **confederation,** in which the national government has no independent power and the subunits are in effect independent countries. In practice, even unitary governments can and do delegate power to local subunits. Likewise, the nations of a confederacy can and do work together in various cooperative arrangements. However, in both cases it is clear who has the final say about any question.

Figure 3.1
Systems of Government



Federalists and Antifederalists

The Articles of Confederation, as the name implies, created a confederation, in which the thirteen states remained independent. Major decisions of the central government could be made only by a unanimous vote of all the states, meaning that each state retained almost complete control of its own destiny. Significantly, it was the states, and not the people, who were represented in Congress, and the national government could act on the people of a state only with that state's cooperation.

The advocates of the Constitution of 1787 sought to create a fundamentally new form of government. The old way of thinking held that there could be one, and only one, sovereign (or ultimate authority) in each political system. Either the states were sovereign, and linked in a confederation, or the national government was sovereign, and the states were merely convenient political subdivisions without independent political authority. The Federalists rejected this way of thinking, arguing instead that the true sovereign in America was the people. Under the Constitution, the people divided up their sovereign power, giving some to the national government and some to the states.

The practical effect of the Federalists' theory was to enhance the power and influence of the national government.[2]

Oddly, the term *federalism* has come to mean the exact opposite of this usage. By modern standards, an advocate of federalism is one who believes in giving power to the states. Calls for a New Federalism, from Nixon to Reagan to the present day, have been attempts to turn back the tide of nationalism and return power to the states. The Federalist Society, to take another example, is a group of conservative lawyers and judges who generally oppose the expansion of national power.

The idea that the national government should play the predominant role in a federal system is known as *nation-centered federalism*. Its alternative, in which the states play the dominant role, is known as *state-centered federalism*.

Models of Federalism

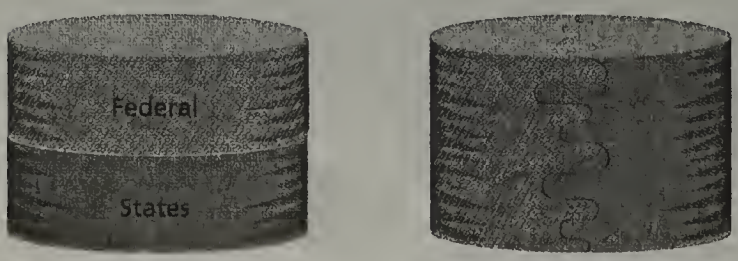
By itself, the definition of federalism does not specify the exact relationship between the national government and the states. Not surprisingly, there have been many attempts over the years to create a more specific blueprint for the federal system. Several important models of federalism have evolved over the years. All of these models describe both how American federalism works (or worked) in practice and how it ought to work in theory.[3]

Dual or "Layer Cake" Federalism The constitutional theory favored by the Supreme Court in the nineteenth century was **dual federalism,** which recognized that both the states and the national government were supreme within their respective spheres of power. Dual federalism is also called **"layer cake" federalism.** Issues that required national uniformity or the combined resources of the nation—such as foreign policy or the control of navigation—were entrusted to the national government. Problems that could best be solved with reference to special local conditions or customs were left to the states.[4]

Dual federalism had the advantage of theoretical neatness, but in practice it was far less tidy. Drawing the line between state and national power was difficult, and often arbitrary. For example, the Court banned the states from most forms of railroad regulation, but permitted the states broad authority to regulate roads and highways.[5] In addition, even in the 1800s many powers were shared between the two levels of government, meaning that the two layers of the "layer cake" often blended into one another.

Figure 3.2 **Models of Federalism**

"Layer cake" or dual federalism emphasizes the independence of the federal government and the states, with each supreme in its own sphere. The federal government, however, is clearly the top layer: any valid federal action takes precedence over conflicting state actions. "Marble cake" or cooperative federalism emphasizes the importance of the federal and state governments working together to solve the complex problems facing the nation.



Dual federalism

Cooperative federalism

Cooperative or "Marble Cake" Federalism The weaknesses of the layer-cake model gave rise to a new metaphor. The model of **cooperative (or "marble cake") federalism** underscores the importance of cooperation between the two levels of government. It became especially popular after the 1930s, when the degree of cooperation between the states and national government became too apparent to ignore.

Advocates of cooperative federalism argue that society's problems are too difficult and complex to be



Federal and state law enforcement officials escort Timothy James McVeigh, charged in the April 1995 bombing of the Alfred Murrah federal building in Oklahoma City, from the Noble County Courthouse in Perry, Oklahoma. Federal and state officials cooperated in capturing McVeigh, who was later convicted and sentenced to death.

dealt with solely by the national or state governments alone. To achieve the best results, the two levels of government must work together. An obvious example is law enforcement. In solving a particular crime, state and local police officers can contribute a detailed knowledge of the local area and extensive contacts among the local population. The Federal Bureau of Investigation, by contrast, can provide technical expertise such as DNA fingerprinting analysis, coordination with local police in other parts of the country, and the enormous financial and manpower resources of the national government. Working together, local and national officials can often solve crimes that neither could solve alone.

Creative Federalism An approach that gained acceptance in the 1950s and 1960s was **creative federalism,** which called for cooperation between state and national governments, along with the private sector, to solve problems like poverty and urban decay. Creative federalism stressed the need for new and innovative solutions that could be developed in one area of the country and then exported elsewhere. The federal government's role was to provide funding, coordination, and technical expertise. The creative federalism model was really an extension of cooperative federalism, although in general it envisioned a larger federal role than had previously been called for.

New Federalism In the early 1970s, President Richard M. Nixon moved to shift creative federalism in the direction of state-centered federalism, calling this new approach the **New Federalism.** Acting on the view that the federal government had grown too strong and too intrusive into the affairs of the states, Nixon pushed the national government to return power to the states without reducing federal funding for various programs. Although Nixon made some headway in this area, his policies managed only to slow, rather than reverse, the flow of power to the national government.

Nixon's efforts were redoubled under President Ronald Reagan. Reagan's New Federalism (we might call it the *New* New Federalism) emphasized a smaller role for the national government in general, including reduced financial support for the states. Like Nixon, Reagan was only partially successful in his efforts. Advocates of the Nixon-Reagan approach to federalism got a major boost in 1994, with the election of a Republican Congress strongly committed to returning power to the states. The Republican Congress, with the approval of President Clinton, returned power to the states in several policy areas, including welfare and health care.

Table 3.1
Number of Governmental Units in the United States, 1992

United States	1
States	50
Counties	3,043
Municipalities / Cities	19,296
Towns / Townships	16,666
School districts	14,556
Special districts	33,131
Total	86,743

Federalism Under the Constitution

The original Federalists made sure that the Constitution created a strong national government. They not only expanded the powers of the national government but also specifically reduced state power in key areas. Moreover, they made sure that disputes over the appropriate boundaries of state and national power would be decided by the Supreme Court—a tribunal that is itself a part of the national government.

Increased Powers of the National Government As Chapter 2 made clear, the Constitution greatly increased the powers of the national government. First, it expanded the scope of national authority in many areas, especially the regulation of commerce. Second, it gave the national government independent executive and judicial branches, allowing it to carry out and enforce its own laws. Third, it expressly declared the Constitution and laws of the United States to be supreme over state laws and state constitutions.

In addition, the Necessary and Proper Clause gave the federal government ample means to carry out its legitimate responsibilities, and the Supremacy Clause ensured that valid federal laws would take precedence over any state laws or constitutions. Thus no state can interfere with the legitimate exercise of federal authority.

Restrictions on State Power The Constitution also boosted national power by banning all state involvement in certain policy areas. For example, the states were prohibited from making treaties with foreign countries and were denied the power to coin money or levy taxes on imports or exports. Other restrictions, although not set out explicitly in the Constitution, were added later through judicial interpretation. The federal government's power over interstate commerce, for example, was held in many cases to prohibit state regulation even when Congress had chosen not to exercise its power.

Shared and Reserved Powers In many cases constitutional power is shared between the state and national governments. Either government can exercise such **shared powers,** or both can do so, even at the same time. Examples of shared powers include tax collection and law enforcement. In addition, many areas of state and national responsibility necessarily overlap. National regulation of commerce, for example, may overlap with state regulation of health and safety. The large number of shared and overlapping powers makes cooperation between the national and state governments a high priority.

A few powers are specifically retained by the states and denied to the national government. These are known as **reserved powers.** For example, no new states can be formed by the carving up or combining of existing states without the consent of the affected state legislatures, nor can any state be deprived of its equal representation in the Senate. Under the Twenty-first Amendment, states are given complete control over intoxicating liquors. The Tenth Amendment serves as a reminder that powers "not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Finally, the Supreme Court has recognized that the states possess a "residual sovereignty"—powers left to them by the Constitution and upon which Congress may not impose. The states' residual sovereignty includes the right to say no to federal demands for assistance in implementing or enforcing national programs.

Some powers are denied to both the states and the national government. These include the prohibitions of the Bill of Rights. Also included are a ban on *ex post facto laws,* which retroactively make it illegal to do something that was legal when it actually occurred, and on *bills of attainder,* which are laws that convict a person of a crime without benefit of trial.

The Supreme Court as Umpire of the Federal System The Framers made sure that disputes over the meaning of the Constitution and over the appropriate boundaries of state and national power would be resolved by the federal government itself, through the agency of the United States Supreme Court. Because Supreme Court justices are nominated by the president and confirmed by the United States Senate, they have been generally sympathetic to the idea of a strong national government. Although there have been dramatic exceptions—including a few in recent years—over the long haul the Court has generally sided with the national government in its disputes with the states.

A History of Federalism Under the Constitution

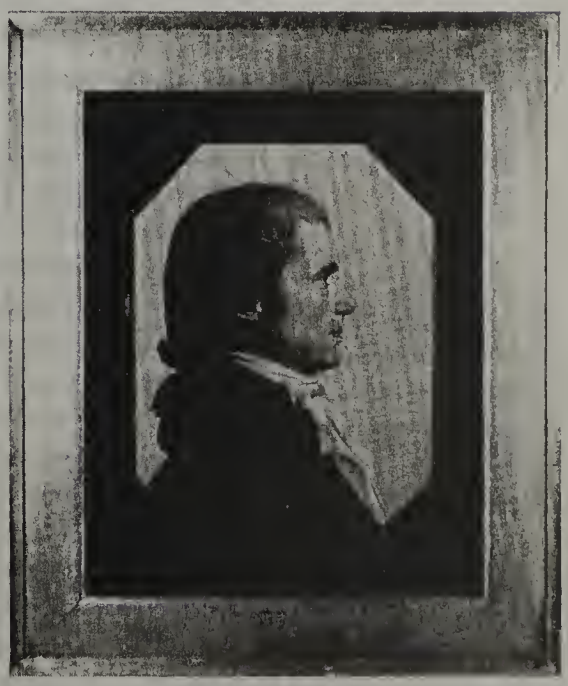
The long-term history of federalism under the Constitution shows a dominant trend toward nation-centered federalism. Movement in this direction has been neither steady nor consistent, however, and until well into the twentieth century the national government played a relatively minor role in the lives of ordinary people.

The road to nation-centered federalism was paved early on by the Supreme Court, which from the beginning has generally advocated an expansive definition of national power under the Constitution. But the motivating force behind nation-centered federalism has come from the presidency and Congress, which have acted at key moments to expand national power in many areas. The most dramatic expansion of national authority came during and after the Great Depression of the 1930s.

The Marshall Era and the Foundations of National Power

Both Federalists and Antifederalists agreed that the national government had more power under the Constitution of 1787 than under the Articles of Confederation, but how much more became a matter of great debate.

The groundwork for a broad interpretation of national power under the Constitution was laid by Chief Justice **John Marshall,** himself a Federalist, whose Court career stretched from 1801 to 1835. Strongly supported by most of his fellow justices, Marshall



Chief Justice John Marshall, upon taking office in 1801. An ardent nationalist, Marshall had been wounded at Valley Forge and well knew the dangers of a weak and ineffective government. Over the course of his thirty-four-year career on the Court, Marshall's decisions strengthened the national government at the expense of the states.

first established the Court's power to decide key constitutional questions, then used that power both to restrict the states and to expand the powers of the Union.

Three early decisions established the Court's right to decide constitutional questions. In the 1803 case of *Marbury* v. *Madison*,[6] the Court claimed the power to judge the constitutionality of laws passed by Congress. Seven years later, in *Fletcher* v. *Peck*,[7] the Court expanded its authority to include review of state laws that might conflict with the Constitution. Finally, in the 1816 case of *Martin* v. *Hunter's Lessee*,[8] Marshall's colleague Joseph Story declared that the Supreme Court—and not the highest state courts—would have the final say over questions of federal law, including the meaning of the Constitution.

The Marshall Court now had two ways to enhance the power of the national government. First, it could strike down state laws that interfered with the authority of the federal government. Second, it could use its power of judicial review to *uphold* acts of Congress, thereby helping to erase any doubts about their legitimacy. In his thirty-four years on the Court, Marshall led his colleagues in using both techniques. The Court struck down a number of state laws that conflicted with his nationalistic vision of the Constitution, and upheld every act of Congress that came before him except one—the minor provision of the Judiciary Act of 1789 at stake in *Marbury* itself.

In the 1819 case of ***McCulloch*** v. ***Maryland,*** Marshall used both powers. First, he upheld the constitutionality of the Bank of the United States, even though the Constitution nowhere gave Congress the power to charter a bank or even to establish a corporation. Marshall grounded his decision on the Necessary and Proper Clause, which gives Congress the power to enact all laws "necessary and proper for carrying into Execution" its other powers under the Constitution. Rejecting arguments that this provision was intended as a limitation on congressional power, Marshall ruled that the clause allows Congress wide latitude in choosing the means for carrying out its delegated powers. "Let the end be legitimate," he wrote, "let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited; but consist [sic] with the letter and spirit of the Constitution, are constitutional."[9]

I do not think the United States would come to an end if we lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several states.

—Supreme Court justice Oliver Wendell Holmes, Jr., "Law and the Court" (1913)

In the same case, Marshall also struck down a Maryland law that interfered with the operations of the national bank. Maryland had imposed a tax on securities issued by any bank within the state. Although the tax amounted to only $15,000 (not an enormous sum even by nineteenth-century standards), Chief Justice Marshall rejected it as unconstitutional. Declaring that "the power to tax involves the power to destroy," Marshall ruled that states could not tax the operations of the federal government. The bank tax was unconstitutional, Marshall ruled, because "the Constitution, and the laws made in pursuance thereof, shall be the supreme law of the land."[10]

The Supreme Court advanced the cause of nationalism in another important case in 1824. In ***Gibbons*** v. ***Ogden,***[11] Marshall took a sweeping view of the Commerce Clause, which gives Congress control over "commerce among the states." The Constitution did not define commerce, nor did it provide a rule for deciding where local commerce ended and national commerce began. Also unclear was whether the states could make regulations that had a direct or even incidental impact on interstate commerce.

Marshall had few doubts. He interpreted commerce broadly, to include navigation as well as commercial activities, and ruled that the federal government could regulate any commerce "which concerns more states than one." Only those activities that were "completely within a state," did not affect another state, and did not concern the interests of the national government were immune from federal regulation.

Political Developments Although the Marshall Court gave the national government broad constitutional authority, the national government's role remained relatively small. In general the national government focused on foreign affairs, economic matters, and "internal improvements"—building roads, buildings, canals, and the like. The national bureaucracy started off small but grew steadily, from approximately one thousand civilian employees in the 1790s to more than eleven thousand by the 1830s. Still, federal programs remained modest and were easily financed by customs duties, proceeds from western land sales, and taxes on liquor and other commodities.

Because the national government's programs were so limited, interactions between the state and national governments were relatively minor. In general, the two spheres of government remained clearly distinct, closely following the dual federalism model. Opportunities for both conflict and cooperation between the states and the national government were equally limited.[12]

The Challenge to National Power

Many of the decisions of the Marshall Court were highly controversial. Although Marshall faced little opposition within the Supreme Court, he was bitterly opposed by those who feared the kind of powerful national government he sought to create. Among Marshall's fiercest critics were President Thomas Jefferson and Virginia Supreme Court Justice Spencer Roane.

The Theory of States' Rights In the seventy years between the adoption of the Constitution and the outbreak of the Civil War, these and other critics of national power presented a continual challenge to the developing theory of national supremacy. Along the way, they developed several theories designed to block the growth of the national government. Collectively, these doctrines constituted the theory of **states' rights.**

The two most important states' rights doctrines in the pre-Civil War era were **nullification** and **interposition.** Advocates of nullification—including John C. Calhoun of South Carolina—argued that each state had the right to nullify the actions of the federal government by acting in a special convention called for the purpose. Supporters of interposition claimed that the states could take direct action to prevent enforcement of unconstitutional national policies, thus "interposing" the state between the people and the national government. For example, Calhoun argued that the southern states should prevent the national government from delivering abolitionist propaganda in the mails.

The Civil War Crisis These early skirmishes over national supremacy were only preludes to the main event. Building on Calhoun's theory, Southern leaders determined to maintain the institution of slavery eventually mounted the ultimate challenge to national supremacy, defending the states' right to secede from the Union altogether.

The legal case for secession rested on the argument that the states were supreme over, and indeed had created, the national government. Abraham Lincoln's unyielding opposition to the rebellion was in large part an expression of his belief that the states had no legal existence outside the Union and retained only those powers reserved to them by the national Constitution. In Lincoln's view, the national government could exercise power over any matter that concerned the whole nation, while the states could act only in matters of purely local concern.

The Union's victory on the battlefield dealt a severe blow to the doctrine of states' rights. After the war, the Thirteenth, Fourteenth, and Fifteenth Amendments created a constitutional basis for national intervention in what had been the internal affairs of the states—especially to protect the rights of the freed slaves and other minorities. It would be more than a century, however, before the national government put these powers into full operation.

The Struggle for National Supremacy

In the meantime, the battle for national supremacy shifted to the economic arena. Rapid economic, social, and technological change between 1870 and 1930 created serious problems for the nation and led to new opportunities for the exercise of national power. Throughout this period, Congress continually experimented with innovative applications of its constitutional powers.

There are countless examples of the national government's growing role in this period, especially in the area of economic regulation. Early on, Congress asserted control over the railroads, regulating rates and setting safety standards. The development of radio led to the creation of the Federal Communications Commission, with responsibility for licensing and monitoring broadcast stations. New federal laws regulated stockyards, the food and drug industries, and large corporate trusts. The banking system was overhauled and placed under the control of the Federal Reserve System, and the federal government's role in law enforcement was expanded, especially with the creation of a national investigation agency (later the Federal Bureau of Investigation) in 1908. In addition, the national government for the first time began to provide cash grants to the states, for purposes ranging from highway construction to agricultural extension services. All of these activities required money, leading to the amendment of the Constitution in 1913 to allow the creation of a national income tax.[13]

Despite its new roles and increased powers, the national government did not supplant the states as the primary locus of government power. In fact, the growth of the state governments kept pace with that of the national government. Areas of primary state responsibility included elementary and secondary education, public higher education, welfare, police and fire protection, and sanitation.[14] The states also expanded their roles in health and safety regulation and consumer protection.

For the most part, the Supreme Court accepted the growth of both state and national power. In certain areas, however, the Court was less accommodating. In particular, it was hostile to legislation designed to improve the wages and working conditions of laborers. For example, the Court struck down federal laws banning child labor, guaranteeing a minimum wage to women, and prohibiting "yellow dog" contracts, in which workers gave up their right to join a union. The Court also invalidated a number of similar state laws.[15]

The onset of the Great Depression brought the question of Congress's regulatory power to a head. When President Franklin D. Roosevelt took office in March 1933, the nation was mired in an economic crisis of epic proportions. Nearly one of every four Americans was unemployed; the stock market had lost 75 percent of its value; millions had lost their homes, farms, and life savings.[16] Roosevelt led Congress in passing a wide array of new federal initiatives, including laws regulating agriculture, the stock market, and various industries. Roosevelt's **New Deal** also reenacted many of the progressive labor reforms that had previously been rejected by the Supreme Court, including minimum wage and collective bargaining laws. The economic crisis prompted the states to expand their role in economic regulation as well, supplementing and augmenting the national government's response.



The employment of children—even in dangerous occupations such as coal mining, as in this 1903 photograph—was a common practice in the United States until well into the twentieth century.

At first the Supreme Court tried to block the New Deal, striking down a dozen important new programs in 1935 and 1936 alone. In 1937, however, the Court changed its mind, holding that both the state and national governments had broad powers to cope with changing economic circumstances. Accordingly, the Court upheld both state and federal laws governing a wide variety of economic issues, including minimum wages, the right to unionize, and the prohibition of child labor and substandard labor conditions.[17]

Federalism Since the New Deal

For decades after the New Deal, the Supreme Court backed away from any attempt to block state or national regulation on constitutional grounds. Although both levels of government were now free to expand their economic regulation, the national government benefited most. The nature of the federal system allowed the national government to override state laws that conflicted with its own policies, while forcing the states to accept whatever economic regulations Congress handed down.

Trends in Constitutional Federalism From 1937 until 1995, the Supreme Court did not find a single federal law to be in violation of the Commerce Clause. During this period, the Court consistently upheld Congress's authority to regulate even the most localized activities as long as they exerted a substantial effect on interstate commerce, however indirect. In 1948, for example, the Court upheld the conviction of a retail pharmacist under the federal Food, Drug, and Cosmetic Act for "misbranding" two pill boxes, containing twelve tablets, by failing to affix a required warning label. The Court adopted a similar approach

to federal laws involving the environment, civil rights, and organized crime. So broad was the Court's interpretation of the Commerce Clause that many constitutional scholars concluded that there were no circumstances under which the Court would interfere with Congress's authority in this area.

In 1995, however, the Court proved the scholars wrong, ruling in *United States* v. *Lopez* that the federal Gun-Free School Zones Act of 1995 was unconstitutional. The Act made it illegal "knowingly to possess a firearm" in a school zone. Lopez, a high school senior, was convicted under the law for carrying a concealed .38 caliber handgun and five bullets on school premises.

Congress's Commerce Clause authority is broad, Chief Justice William Rehnquist admitted in his opinion for the Court, but it is not unlimited. "The possession of a gun in a local school zone is in no sense an economic activity that might . . . substantially affect any sort of interstate commerce," Rehnquist concluded. To allow Congress to punish Lopez would in effect concede that the federal government could regulate "each and every aspect of local schools." Justice Stephen Breyer, joined by three other justices, wrote a strong dissenting opinion.

Just where the *Lopez* opinion will lead is unclear. Congress's authority to regulate commerce remains broad, and the case may turn out to be a relatively inconsequential exception to the rule. If the Court builds on *Lopez* to nullify other federal laws, however, the case could mark the starting point of a new era of constitutional federalism. It may take years before the real meaning of the case is known.[18]

Two other aspects of economic regulation have caused constitutional controversy in recent years. The first involves federal efforts to regulate not activities within the states but the states themselves. In the 1976 case of *National League of Cities* v. *Usery,* the Court held that Congress could not use the commerce power to regulate traditional governmental functions, such as the wages paid to state employees. Critics of national power hoped that *National League of Cities* would usher in a new era of state autonomy, but within nine years the Court reversed itself and backed away. In *Garcia* v. *San Antonio Metropolitan Transit Authority,* the Court ruled that congressional regulation of state governments would be held to essentially the same standard as congressional regulation of the private sector, for the most part allowing Congress to regulate the states as it sees fit.[19] On the basis of *Garcia,* Congress has extended many federal regulations to cover the states as well as private individuals and corporations. For example, states must pay and withhold social security taxes on their employees, and must comply with federal laws covering pensions and benefits, the rights of the disabled, and family medical leave.

The other area of controversy involves federal efforts to require the states to enforce rules and regulations imposed by Congress. In the 1992 case of *New York* v. *United States,* the Supreme Court ruled that Congress cannot "simply commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." Thus Congress could not force the State of New York to choose between taking over ownership of radioactive waste and implementing a regulatory scheme designed by Congress.[20] In 1997, the Supreme Court extended the reasoning of *New York* v. *United States,* holding in *Printz* v. *United States* that Congress could not force state and local law enforcement officials to perform background checks on prospective gun purchasers. Such a law, the Court ruled, violates the residual sovereignty left to the states under the Constitution. [21]

Federal grants provide an important mechanism by which Congress can induce the states to pursue the policies favored by the national government. Moreover, now that the states are accustomed to receiving federal money, Congress can use the threat of withholding funds as a way to pressure the states into compliance with national goals. When Congress wanted to convince the states to adopt a 21-year-old drinking age, for example, it threatened to withhold 5 percent of federal highway funds from any state that did not follow along. In 1987, the Supreme Court ruled that such a law was perfectly constitutional, at least so long as the federal policy merely offered the states a choice and did not coerce them into compliance.

The Era of Cooperative Federalism The period from 1937 to the 1960s saw the full flowering of cooperative federalism. Both the states and the national government expanded into many areas of social and economic life in a "continuous collaboration."[22] Local, state, and national officials worked together on a daily basis, sharing resources and decision-making authority. In general the national government sought to forge partnerships with the states rather than displace them altogether, a pattern that continues even today. Typically, the federal government set out broad guidelines for programs and provided much of the money. The states then were free to adapt the programs to fit local needs and would run the program on a day-to-day basis.

The national government chose the cooperative approach for several reasons:

- Including the states as partners may make social programs more acceptable to the people, many of whom remain suspicious of federal power.
- Giving the states a degree of control of social programs allows programs to be tailored to the particular conditions of states and local communities.
- Encouraging state participation permits valuable experimentation on a small scale, making it possible for the federal government to test new ideas without committing massive resources in advance.

The cooperative nature of this era should not be overstated, however. Building on the New Deal, the national government took over the major role in a number of important areas, including labor relations, the stock markets, electric power regulation, and banking. As federal grants increased, moreover, Washington's leverage over the states grew accordingly.

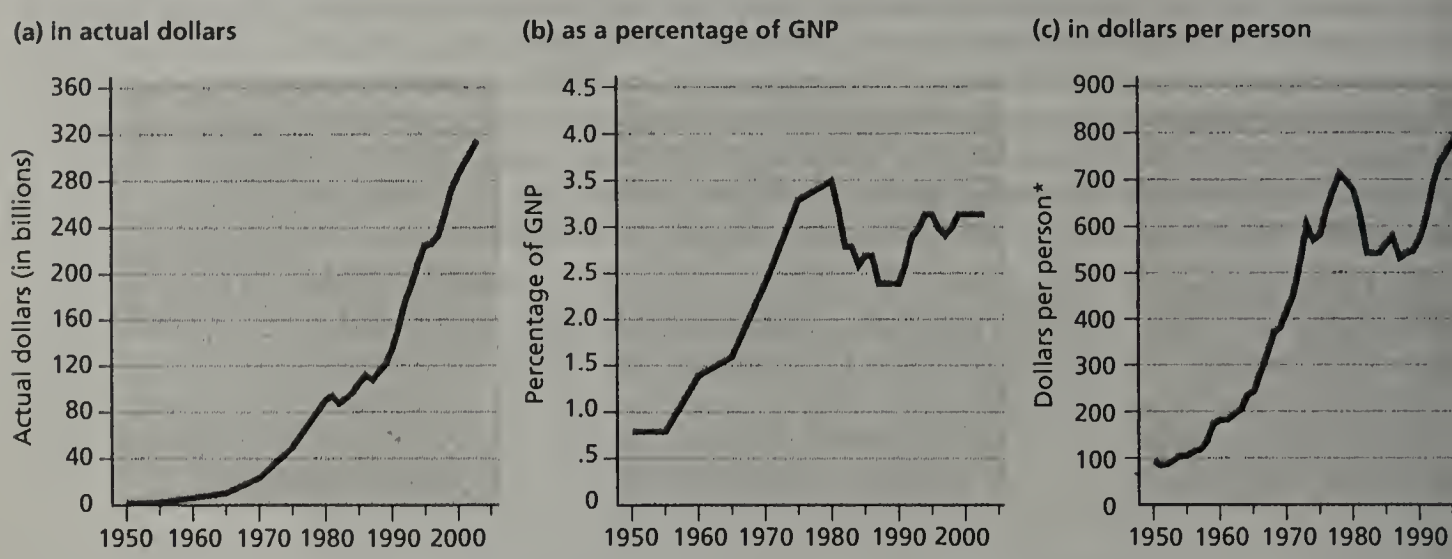
President Lyndon Baines Johnson's **Great Society** programs of the mid-1960s marked a period of particularly aggressive federal growth. Under Johnson, the government added new social programs to guarantee housing, food stamps, and medical care to poor and elderly citizens. Johnson also expanded the government's role in enforcing civil rights, especially in the South, and in promoting educational equality and opportunity.



President Lyndon Johnson holds out the newly signed bill establishing Medicare, one of the "Great Society" programs of the 1960s. Most of these programs were funded by Washington and administered jointly with the states.

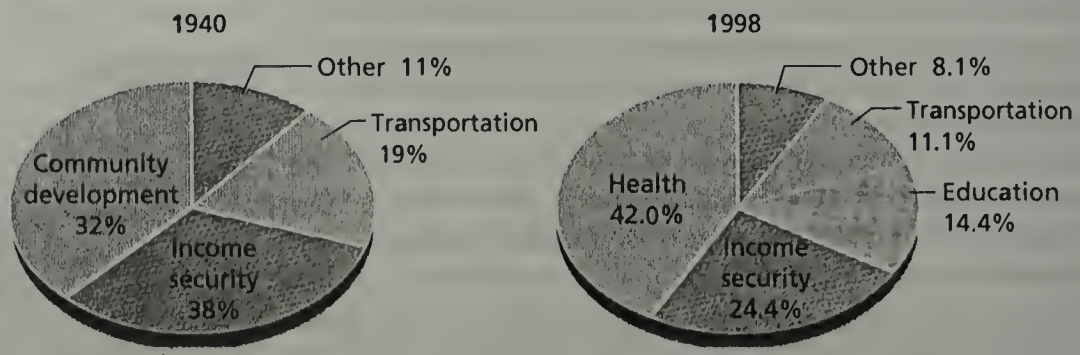
Federal Grant Programs and the New Federalism The primary tools of cooperative federalism were federal grants, which involved a transfer of funds from the national to the state governments. Al-

Figure 3.3 **Federal Grants to the States**



SOURCE: FY 1999 Budget, Historical Tables, Table 12.1; 1997 Statistical Abstract, Tables 2, 3.

Figure 3.4 **Federal Grants by Function, 1940 and 1997**



SOURCE: FY 1999 Budget, Historical Tables, Table 12.2

though the first federal grant programs date to the last century, the explosive growth of such programs dates only from the 1960s. Grant programs serve several purposes. They put federal money behind the goals set by Congress, establish minimum standards for state programs, allow for flexibility and innovation in implementation, and offer states a choice as to whether or not to participate.

Federal grants come in a variety of shapes and sizes. **Categorical grants** provide federal money for narrow and specific purposes, such as building new schools or new prisons. **Block grants** provide money for broad purposes, such as education or law enforcement, with relatively few strings attached. **Revenue sharing** simply transfers money from the federal government to the states, for use as the states see fit. In general, categorical grants allow the national government to fine-tune the details of social programs, whereas revenue sharing does not; block grants fall somewhere in the middle. Thus conservative opponents of large national programs have typically favored block grants or revenue sharing.

Figure 3.5 **State and Local Government Spending as a Percentage of Total Government Spending**



NOTE: Percentages from 1989–1995

Grants can also be distinguished by the way they are allocated among different states and localities. *Formula grants* provide a set amount of money to each jurisdiction, according to specific rules, such as the size of a city or the number of citizens under the poverty line. *Project grants* provide money on a project-by-project basis, usually after an elaborate application procedure. Whatever their form, federal grants remain an important component of state and local finance.

In recent years the national government not only has given money to the states, but has taken it away—at least indirectly. Faced with a budget crisis of its own, Congress has increasingly implemented its programs through so-called unfunded mandates, which impose requirements on the states without paying for them. Unfunded mandates are partly responsible for the trend depicted in Figures 3.3 and 3.5: state expenditures are going up, while federal grants to the states are going down, at least on a per capita basis. In 1995, Congress approved legislation limiting the use of unfunded mandates in the future, and the impact of the *Printz* decision may make it more difficult for Congress to pass enforcement responsibilities onto the states.

Federalism Today: Cooperation and Conflict

From a theoretical point of view, Congress could take over most of all the programs currently run by the states. Congress could create a national drivers' license, take over many local police functions, license dentists and physicians, and even set up a national education system.

In practice, however, the states retain much of their power and independence. Congress *could* take over various state police functions, but it has not. It *could* set forth a comprehensive national education policy, but it has chosen to leave such decisions largely in the hands of state governments and local school boards. It *could* also enact rules to expand its influence over the

nation's medical system, but instead it has left a great deal of room for the states, which still control the licensing of physicians and medical workers, make key public health decisions, and have primary responsibility for monitoring medical procedures and punishing malpractice.

Many aspects of modern federalism draw from the various models of federalism that dominated past eras in American history. As under dual federalism, policy areas remain in which the national and state governments operate independently of one another. As in the periods of cooperative and creative federalism, the two levels of government work closely together, with national grants still playing a major role in many programs. And, as always, the states and the national governments continue to fight with one another over what should be done, who should do it, and how it should be done.

Sorting out the state and federal roles in any given policy area is a complex and difficult task. This section aims at providing a broad overview of the federal-state relationship—one that is sometimes strained but often friendly, sometimes adversarial but often cooperative, sometimes inefficient and awkward but often smooth and productive.

It should be noted that the federal constitution makes no mention of local governments. For the purposes of federal constitutional law, local governments are treated as part and parcel of the state governments.

Primarily Local Functions

By tradition and practice, the states and local communities retain enormous power over a range of day-to-day activities. These include the following:

Public Education From universities to kindergartens, public education in America is largely determined by state governments and local school boards. Washington's role is mainly to provide funds and give advice. The federal government funds a variety of specialized programs, including college loan and grant programs, school lunch programs, and special programs for the educationally disadvantaged. Even in these programs, much of the day-to-day administration is left to local schools and agencies.

Police and Fire Protection Despite the rapid growth in federal criminal law, most law enforcement is still carried out by state, county, and local police agencies. Fire, ambulance, and other public safety activities are also matters of primarily local concern. Federal agencies (the Federal Bureau of Investigation, the Drug Enforcement Agency, and the Secret Service) work closely with local authorities, and provide special services such as advanced laboratory work. Many criminal activities, such as drug trafficking, involve both state and federal offenses. Only a few types of crime are handled exclusively by the federal government.

An important, if indirect, role in law enforcement is played by the federal courts, through the enforcement of such constitutional guarantees as due process of law and freedom from unreasonable searches and seizures. The Court's 1966 ruling in *Miranda* v. *Arizona,* for example, forced state and local police to warn suspects of their constitutional rights before questioning on alleged criminal activity.[23]

Basic Legal Codes and Procedures Although the Constitution provided a federal court system to interpret and apply federal law, most basic legal problems and procedures are

handled by the individual states. The states set their own rules concerning property ownership, marriages, divorce, enforcement of contracts, and ordinary civil lawsuits. States must follow the fundamental principles of the Constitution, and often choose to create uniform and consistent legal codes, but still the laws in one state may vary greatly from those in another. The Constitution's Full Faith and Credit Clause requires each state to respect legal proceedings—such as marriages and divorces—that occur in the other states.

Routine Services Any local phone book reveals the range of basic services provided by state and local governments. They include the licensing of motor vehicles, drivers, and various professionals and businesses (from doctors and lawyers to hairdressers and restaurants); water and sanitation; building permits and inspections; and animal control. Various federal agencies provide funding and support services in connection with some of these functions.

Shared Functions

Many aspects of public policy are handled by a combination of local, state, and federal agencies. In many cases the federal government provides funding and sets out general rules, but the states actually administer the programs and can extend or limit services. Examples include the following:

Public Health Every level of government is involved in making and administering health policy. The federal government funds the lion's share of medical research, through the National Institutes of Health and various grant programs. It also funds the Medicare and Medicaid programs, which provide health care to the elderly and the poor. The Center for Disease Control coordinates national public health programs and policy and provides expertise to state and local agencies. The Department of Veterans' Affairs provides a network of hospitals for the care of those who served in the armed forces.

The massive amount of federal money in the health system gives Washington extraordinary leverage and influence in health policy decisions. But the state and local governments also play a key role, taking primary responsibility for community planning for health care; licensing and supervision of doctors, hospitals, and other providers; and monitoring the public health, including maintaining birth and death records, monitoring disease outbreaks, and providing health education.

Public Works and Highways Federal funding for public buildings, roads, airports, and other facilities gives Washington considerable influence over what is built, where, and how. Such spending is determined by Congress and various federal agencies, in cooperation with local officials and agencies. Federal grants typically require some amount of state matching funds; for example, states must match every nine dollars in interstate highway funds with one dollar of their own. Local authorities maintain and police federal highways, including interstates, but because of federal funding Washington exercises considerable influence over speed limits and other traffic rules.

Economic and Environmental Regulation Despite the expansion of the federal government's role in economic regulation after 1936, state laws continue to govern a wide array of economic activities. Anyone who travels from state to state will quickly recognize the impact of local differences.

New York State, for example, prohibits rental car companies from charging an optional collision insurance fee. California's standards for automobile emissions are far stricter than those imposed by the federal government. The legal relationship between workers and employers, although covered by an extensive network of federal laws, still varies from state to state.

Virtually every industry is regulated by both the federal and the state and local governments. Insurance companies must comply with federal rules concerning the soundness of their financial practices, but must follow state laws on rates and coverage. Drugstores must follow both state and federal regulations on controlled substances, and businesses in general must obey both state and federal environmental rules.

Primarily Federal Functions

The exclusive—or nearly exclusive—powers of the federal government are too numerous to list here. What follows is just a brief sampling.

Defense and Foreign Policy The Constitution leaves defense and foreign policy almost entirely in the hands of the national government. The national government is responsible for recognizing foreign governments; sending and receiving ambassadors; declaring and waging war; making treaties and alliances; and raising and supporting an army and navy. The national government also regulates the importation of goods into the United States and controls the immigration and naturalization of noncitizens. The Constitution bars the states from entering into treaties or alliances, and prohibits them from engaging in war without the consent of Congress, "unless actually invaded." States are permitted to maintain National Guard units to deal with local emergencies. Guard units can be called into the service of the national government by order of the president.

Air Transportation, Radio, and Television The federal government is chiefly responsible for the regulation of industries that are national in scope or whose efficiency requires uniform standards and regulation. These include air transportation, industries depending on the airwaves (such as radio and television), and railroads. Even in these industries, however, Congress has allowed room for state regulation when only local matters are involved. Thus local governments continue to provide airport police services, but security inspections of baggage and passengers are under federal control. Congress can always flex its muscles when it feels the need, of course. In 1991, for example, it extended federal regulation to basic cable television rates, which had previously been regulated only by state and local governments.

Dormant Commerce Power In many cases the federal courts have prohibited state efforts to regulate commerce even in areas where Congress has chosen not to regulate. In such areas the courts presume that Congress's inaction constitutes a deliberate decision to avoid all regulation, state or federal.

States remain free to make local regulations that are essential to the public health or safety, but such rules must be specifically and carefully justified in every instance. Thus a state can prevent diseased meat from entering its boundaries, but it cannot prohibit the flow of out-of-state waste to its landfills. In drawing this distinction, the Supreme Court reasoned that the diseased meat created the specific danger of contagion to local herds, whereas the out-of-state waste products were no more dangerous than those produced within the state.[24]

Does Federalism Matter?

Is there, in practice, any real difference between a federal system and one in which the state governments are merely subdivisions of the central authority?

The short answer is yes: federalism does matter. In some ways federalism improves the efficiency of government. In other ways it creates confusion, duplication, and inefficiency. The following discussion focuses not on the theory of federalism, but on an analysis of how federalism really works in the United States.

Advantages of Federalism

The main advantages of federalism lie in its ability to provide uniformity when a national standard is necessary or desirable, while still allowing for flexibility and a concern for local conditions and customs when appropriate. The balance between state and national functions is hardly perfect, of course. But the federal system still goes a long way toward accommodating the conflicting needs of uniformity and diversity.

Flexibility What works for Mississippi may not work for Massachusetts; what is good for Arkansas may not be good for Alaska. A federal system allows different states and communities to adapt to varying conditions and traditions. At the same time, the strong central government can move in to solve common problems or enforce common standards of justice. For the New York police to follow the same rules and procedures as a rural sheriff's office in the Southwest, for example, would be disastrous. However, the federal courts can help ensure that both police forces follow the basic rules of criminal procedure laid out in the Constitution, and that all those accused of a crime are afforded due process and equal protection under the law.

Experimentation A new idea can be developed and tested at the local level. If it works, it can be adopted by other states or even by the federal government. Years ago the state of Wisconsin experimented with a progressive income tax; it worked, and the idea soon spread to other states and to the federal government. Currently, different states are experimenting with innovative solutions to the national health care problem. When President Bill Clinton proposed a national system of free vaccinations for needy children in 1993, for instance, he could draw on the experience of similar programs in several states.

A bad idea, of course, can be quietly laid to rest without its negative effects spreading beyond the local or state level.

Competition Just as the capitalist economic system encourages efficiency through competition of private individuals and corporations, so too the federal system encourages efficiency through competition of different states. When a foreign corporation is choosing an American site for a new manufacturing plant, for example, it can enjoy the benefits of several states competing to attract its attention. Much of this competition consists simply of tax giveaways and other financial incentives, but it may also stimulate the states to improve education, job training, and infrastructure.

DEBATING THE CONSTITUTION



Should Welfare Be Controlled by the States?

A long-standing debate over federalism came to a head with the election of a Republican-controlled Congress in 1994. With the cooperation of President Bill Clinton, the new Congress dramatically overhauled federal welfare policy, shifting major responsibilities from the national government to the states.

The new welfare law replaced the Aid to Families with Dependent Children (AFDC) with a new program called Temporary Assistance to Needy Families (TANF). Unlike AFDC, which was a tightly controlled federal program, TANF gives the states money in the form of block grants, and allows the states great latitude in deciding how to spend it.

The new law is highly controversial, and remains the subject of intense debate. At stake is not only the future of welfare policy, but whether the TANF model will be applied to other areas of social policy, especially health care.

Arguments for block grants

Opportunity for experimentation. Actually, the states had been experimenting with new welfare ideas since 1992, when the Bush administration began granting state-by-state waivers, permitting departures from standard federal policies. States used waivers to try out a wide range of strategies designed to reform the nation's welfare system. For example, while the federal government talked about putting time limits on welfare and requiring that beneficiaries work, various states implemented both approaches. Among the programs tried out were "workfare" programs, fixed time limits followed by community or public work, and fixed time limits without work guarantees.

Advantages of local solutions. Supporters of block grants point out that states know best how to approach special problems within their local jurisdictions. The United States is "a large, diverse country with very different welfare needs and different communities with differing values," comments one analyst. In parts of West Virginia, for example, jobs are so scarce that talking about workfare makes no sense. Advocates of block grants argue that state-run programs are likely to be leaner, more efficient, and better managed than the federally managed program. Finally, supporters of block grants make a philosophical defense of giving power to the states. "People want

Competition may also generate demands for change through comparisons with other states ("Why can't we do this as well as Illinois?"), or through comparisons between levels of government ("The federal government manages to do this; why can't we?").

National Strength without National Uniformity Advocates of dividing power between the state and national levels stress that the benefits outlined above are achieved without sacrificing the strength of the nation as a whole. Military and foreign policy is handled by the national government, eliminating the weakness and inconvenience of government by committee in these critical areas. National economic power is strengthened by the federal government's ability to regulate interstate commerce. National standards of rights and justice can be imposed without sacrificing local power and control.

Controlling Abuses of Power An original argument in favor of federalism, advanced by James Madison, was that the two governments would keep each other in check, providing a further safeguard against abuse of power. The national government no doubt provides an effective check on state power—especially through the federal courts—but the opposite is

more decisions being made in their own hometown and in their state capital than in Washington," says the governor of Utah. "And they want less government, and this is the way to get it."

Arguments against block grants

The need for federal standards. Topping the list of arguments against block grants is the fear that some states will fail to meet their obligation to provide for the truly needy. Rather than seeking innovative ways to stretch federal dollars, critics argue, some states might simply cut benefits for the poor. Likewise, advocates of tough welfare policies (such as workfare) argue that block grants have let states adopt a lax approach to welfare policy. "Historically, governors have loved to delude voters by pretending to have much tougher work requirements than they really have," one critic argues, "and that tendency is very much alive today." Critics of block grants argue that both fairness and the need for accountability require the existence of national standards. Any need for flexibility can easily be met by allowing for state-by-state waivers of federal rules, when appropriate.

The difficulty of state-based redistribution programs. Some economists and policy analysts point out that the states are ill equipped to manage programs that redistribute income from the "haves" to the "have-nots." The problem, simply stated, is that the wealthy are free to move to low-tax states that offer low welfare benefits, while the poor can move to high-tax states with generous benefits. (Under the 1969 Supreme Court decision of *Shapiro* v. *Thompson*, states cannot deny welfare benefits to new residents or impose an unreasonable waiting period.) "Since 1970," writes Paul E. Peterson, "states have been in something of a race to lower welfare benefits for fear that high benefits could attract poor people to the state—thus raising social spending and perhaps triggering an exodus of taxpayers." When Washington gave the states the opportunity to apply for waivers from federal AFDC requirements, Peterson points out, the first three proposals all proposed new restrictions on welfare. The assumption that taxpayers and welfare recipients are sensitive to variations in state welfare policy, however, has not been proven.

Sources: A. Sidney Johnson III, "States Aren't Waiting for Federal Welfare Reform," *Public Welfare* (Winter 1995), pp. 18–20; Susan Kellam, "Welfare Experiments," *CQ Reseorcher* (September 16, 1994), pp. 795–811; Joe Klein, "Let the States Do It," *Newsweek* (December 5, 1994), p. 35; "Blockheads: Political Use of Federal Block Grants," *New Republic* (March 20, 1995), p. 7; David Whitman and Penny Loeb, "Let 50 Flowers Bloom," *U.S. News and World Report* (March 27, 1995), pp. 22–26; Paul E. Peterson, "Who Should Do What," *Brookings Review* 13 (Spring 1995), pp. 6–11; Mark Shroder, "Games the States Don't Play," *Review of Economics and Statistics 77* (February 1995), pp. 183–191.

rarely true. In some ways the states do provide a means through which the people can make their demands heard in Washington. The tax revolt in California in the late 1970s, for example, led to a national debate on taxes and an income tax cut under Ronald Reagan. California's approval of a strong anti-affirmative action measure in 1996 may have a similar effect. In general, however, state efforts to check the national government are haphazard and uncertain.

Few would argue that the federal system has provided an effective check on the power of the national government. In fact, as we have seen, the past century has seen a nearly continuous transfer of power from the states to the national government.

Increased Responsiveness and Opportunities for Participation The existence of local, state, and national governments greatly increases the opportunities for citizens to participate in politics and the likelihood that they will find a sympathetic and responsive ear at some level of government. A group that fails to achieve results at the national level can often seek relief in the states, and vice versa. When it appeared in the 1980s that the Supreme Court might restrict abortion rights, for example, prochoice groups turned to state legislatures to

protect their interests. When state laws provided insufficient protection from antiabortion protesters who blocked access to abortion clinics, the prochoice groups turned to Congress.

The opportunity to play one government off against another is not unlimited, of course. Since valid federal laws displace valid state laws, those who can mobilize at the federal level have an obvious advantage.

The Importance of Symbolism and the Dumbo Effect Laws passed at the national level can have an important symbolic effect on the states. A national law underscores the importance of an issue and may provide critical momentum to various state efforts. Federal grants can play a similar role. States and localities that might be reluctant to carry all of the burden of new programs may do so if the federal government picks up part of the tab. Surprisingly, such programs often continue even after federal aid has ended. This phenomenon is known as the *Dumbo effect,* after the elephant in the children's story who really could fly on his own, but thought he could do so only with the aid of a magic feather.

Disadvantages of Federalism

Federalism creates problems along with the benefits. Foremost among them are these:

Lack of Accountability When more than one governmental unit is involved in making decisions, assigning blame or credit for what goes wrong or right can be difficult. Federalism allows politicians to blame each other instead of taking responsibility themselves.

In fact, state politics commonly turns on issues that are really the concern of the national government, and national politics often centers on matters of state concern. Candidates for national office have run successfully on a pledge to improve the nation's education system—even though the national government's role in education is extremely limited. Conversely, local candidates often rail against Supreme Court decisions that, once in office, they can do nothing about. A presidential candidate will call for curriculum reform—which must be accomplished by local school boards—and a school board candidate will promise a return to prayer in the schools—which would require a constitutional amendment or a policy shift by the Supreme Court.



"Look, the American people don't want to be bossed around by federal bureaucrats. They want to be bossed around by state bureaucrats."

Cost Shifting Critics also argue that federalism encourages cost shifting between the state and national governments and between different parts of the country. Congress, in recent years, has made a practice of creating policies but refusing to pay for them, in many cases leaving the states to pick up the tab. Conversely, the states may neglect small problems and then call for federal assistance when they turn into big ones.

Another problem is the tendency of national officials, especially representatives and senators, to use the federal government to benefit their own states at the expense of others. Because the national legislators are elected from the states and view themselves as represen-

tatives of their local constituents, they see nothing wrong with this practice and often take credit for it. Thus rural Oklahomans pay for mass transit in New York, and Rhode Islanders pay for farm programs in Kansas. In theory, this cost shifting should balance itself out, but in practice some states play this game better than others.

Lack of Coordination A further difficulty in fragmenting governmental power is a lack of coordination between the many agencies with responsibility for a given problem. Consider, for example, the 1993 outbreak of meat contamination in the Pacific Northwest. Was the problem caused by weak federal standards and lax enforcement at federally inspected slaughterhouses? By inadequate enforcement of health standards on the part of local restaurant inspectors? By ineffective state programs for educating consumers and business operators?

Similar problems have arisen when states are struck by natural disasters, such as hurricanes and earthquakes. It may take days—while people suffer—for the local, state, and national agencies to figure out who should do what, where, and when.

Duplication and the Burden of Diverse Regulations In an age when businesses frequently operate across state lines, keeping up with diverse local regulations may be expensive and difficult. Businesses must comply with relevant federal laws as well. These problems can be lessened by cooperation and coordination between the various states and between the states and the federal government. Many states, for example, have adopted uniform codes of law in areas such as general business law (a recent, more controversial proposal aims at uniform state procedures for the adoption of children). State laws remain diverse in many areas, however, and keeping up with varying rules and procedures can be a major headache for those who do business in many states.

Interstate Competition Although competition among states can encourage change and social progress, it can also lead to waste and inefficiency. The Commerce Clause prohibits a state from directly discriminating against out-of-state businesses, but states are permitted to compete against each other for new businesses. In recent years, competition among states has reached a fever pitch. One bidding war among three states to attract a Canadian steel plant employing four hundred people, for example, cost the winning state's taxpayers an estimated $350,000 per new employee in tax credits, low-interest loans, and new road building projects!

"It would be hard to invent a worse way of spending money than on business incentive schemes," wrote one commentator. "States have little idea how much a job is worth, or whether they are getting value for money from their investments." One state official put it this way: "Right now, all we are doing is eating each other's lunch," he said. "At some stage we have to start thinking about dinner."[25]

The Wrong Level of Government? Ideally, policies that require national uniformity are handled in Washington, and those that lend themselves to local solutions are left to the states. In practice, there is no guarantee that a given policy will be dealt with at the optimal level of government.

Since at least the New Deal, critics argue, the national government has tended to take over programs that might better be left to the states. For example, critics cite federal programs in housing and education as examples of policies that would be better left to the

states or left unregulated. Much of the current debate over health care concerns whether the national government or the states should play the predominant role.

The problem is just as serious in the opposite direction. In many cases the states lack the resources, political will, or leverage to carry out important policies. Rich states would be able to afford more generous social programs than poor states; but once enacted, such programs would attract citizens from other states in search of higher benefits. Similarly, research has shown that it is counterproductive for states to increase the taxes of the rich, since wealthy citizens are free to move to states with lower tax rates.[26]

Too Much Politics? Federalism certainly increases the burdens on the citizen who wishes to keep up with and participate in politics. In a single year, a citizen might be expected to vote in city, county, school district, statewide, and federal elections. For a citizen to be informed about the actions of the government, he or she must follow the actions of the city council, county council, school board, state legislature, and Congress. Add in the separation of powers (mayor, county administrator, school superintendent, governor, president, not to mention the courts), and the burden may be overwhelming to everyone but (or perhaps including) professional political scientists.

Summary

Federalism refers to a political system in which power is divided between the central government and its component parts—in the United States, between the national government and the states. A federal system can be distinguished from both a unitary system, in which all power is lodged in one central government, and a confederation, in which the national government has no independent power and the subunits are in effect independent countries.

The United States Constitution recognizes the sovereign powers of both the states and the national (or federal) government. In theory, the federal government exercises only those powers specifically delegated to it, and the states exercise all powers not specifically denied to them. In practice, the Supreme Court has historically interpreted the federal government's powers broadly, especially under the Necessary and Proper Clause, which gives the United States the power to make all laws necessary and proper to carrying out its delegated powers.

Given the Court's broad interpretation of national authority, serious federalism-based limits to national power are now difficult, although not impossible, to find. At the same time, the Court has increased its own efforts to limit the authority of the states—primarily through application of the Bill of Rights to state action—and has agreed to major federal efforts to limit state power, especially in the area of civil rights.

Still, although Constitution-based limits to federal power are few, the states and their subdivisions remain important players in the American political system. They are primarily responsible for public education, police and fire protection, basic legal codes, and the provision of routine government services. The states also share important powers with the federal government in areas such as public health, public works, economic and environmental regulation, and social welfare programs. Although the federal government plays an important role in setting broad rules and in providing funds, it also imposes requirements on the states through funded or unfunded mandates.

Federalism provides both advantages and disadvantages to the American political system. Its advantages include flexibility, the opportunity for increased participation and experimentation, and the ability to tailor solutions to the state or national level as appropriate. Its disadvantages include duplication, lack of coordination, and lack of accountability when something goes wrong. Federalism may also create "too much politics," making it difficult for even a dedicated citizen to follow public affairs.

Key Terms

Federalism
Unitary system
Confederation
Dual or "layer cake" federalism
Cooperative (or "marble cake") federalism
Creative federalism
New Federalism
Shared powers
Reserved powers
John Marshall
McCulloch v. *Maryland*

Gibbons v. *Ogden*
States' rights
Nullification
Interposition
New Deal
Great Society
Categorical grant
Block grants
Revenue sharing

Review Questions

1. What kind of division of power between the states and the national government did the Federalists envision? The Antifederalists?
2. What is meant by the terms *dual (or layer cake) federalism* and *cooperative (or marble cake) federalism*? In what policy areas does the national-state relationship come closest to the dual federalism model? In what areas does the cooperative federalism model seem more appropriate?
3. What key Supreme Court decisions helped expand the role of the federal government under the Constitution? What decisions helped limit the role of the states?
4. Describe the changing relationship between the states and the federal government since the New Deal. What goals characterized Johnson's Great Society? Nixon's New Federalism? Reagan's New Federalism? What models of federalism come closest to describing each of these periods?
5. What are some advantages and disadvantages of federalism? Identify specific examples of each.

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Internet Resources

The Center for the Study of Federalism, an interdisciplinary research and educational institute at:

http://www.temple.edu/federalism/

The National Conference of State Legislatures; site contains a great deal of information on current policy debates at the state and national levels at:

http://www.ncsl.org

The National Governor's Association: bipartisan organization of state governors at:

http://www.nga.org/

The Council of State Governments, an organization devoted to "promoting state solutions, regionally and nationally," since 1933, at:

http://www.csg.org/

Appendix C: *Civil Rights*

Civil Rights

BASIC CONCEPTS

• Definition of Civil Rights • The Constitution and Equality •

THE PERENNIAL CHALLENGE OF RACE RELATIONS IN AMERICA

• Race Relations Before the Civil War • Race Relations After the Civil War • The Dismal Era: 1876 to 1932 • Small Signs of Progress: 1933 to 1953 • *Brown v. Board of Education* • The Civil Rights Movement and Southern Resistance • From Desegregation to Affirmative Action • Fifty Years of Civil Rights •

THE CIVIL RIGHTS MOVEMENT EXTENDED

• Women • Native Americans • Latinos • Asian Americans • Nontraditional Minority Groups •

AFFIRMATIVE ACTION

• Constitutionality of Affirmation Action •

Can a loyal and innocent American citizen be forced from home and imprisoned in a concentration camp for no reason other than his or her racial or ethnic background? It happened here, to Japanese Americans on the West Coast of the United States during World War II.

The war hysteria that swept the nation after the Japanese navy's attack on Pearl Harbor in December 1941 was particularly intense in California. The alarm was focused on the 112,000 Americans of Japanese descent—three-fourths of them American citizens—who lived there. Always the victims of racial prejudice and discrimination, Japanese Americans were especially vulnerable in the early days of the war. Many of their fellow citizens presumed them to be disloyal to the United States, and they were widely suspected—without evidence—of operating as spies and saboteurs in preparation for a Japanese invasion of the mainland.

Pressed by political leaders in California and by generals in Washington, President Franklin D. Roosevelt approved the creation of "exclusion zones" for Japanese Americans in February 1942. A month later, Roosevelt established the War Relocation Authority, which moved quickly to build and populate a series of relocation camps. Although Roosevelt had acted by executive order, Congress lost no time in passing a law to ratify his actions.

Some Japanese Americans refused to comply with the relocation policy. One of them was Fred Korematsu, who was born in the United States and lived in the San Francisco Bay area. For his disobedience, Korematsu was arrested and convicted of a criminal offense that consisted, in the words of Supreme Court justice Robert Jackson, of "being present in the state whereof he is a citizen, near the place where he was born, and where all his life he has lived."[1] There was no evidence—nor was any required—that Korematsu was in any way disloyal to the United States.

Korematsu's case went all the way to the United States Supreme Court, which rendered its decision in December 1944. Justice Hugo Black, writing for the Court, upheld Korematsu's conviction and with it the entire relocation program. Black conceded that the policy was based solely on a racial classification, but held that such classifications were constitutional if they were justified by a "compelling state interest" and if the means used were necessary to achieve the government's objective. Black had little difficulty finding that Korematsu's conviction met this test: the compelling interest involved was nothing less than the security of the United States, and the method of achieving that goal was to be left to the discretion of the military authorities.

Three justices disagreed. They pointed out that the government could have held hearings to determine whether particular individuals were security risks, and



Japanese Americans arrive from California at the Heart Mountain Relocation Center in the Wyoming desert. Internees had to endure winter temperatures of 30° below zero in makeshift buildings that could not keep out the winds.

they challenged the Court's uncritical acceptance of military expertise in such matters. More to the point, the dissenters recognized that the exclusion and detention program was largely motivated by racial prejudice and hostility. The "foremost advocates of the evacuation," wrote Justice Frank Murphy, were people who for years had spread "misinformation, half-truths and insinuations" against Japanese Americans.[2] Only racial prejudice could explain why Americans of German ancestry had not suffered comparable treatment.

Korematsu v. *United States* is one of the most heavily criticized Supreme Court decisions of this century. Justice William O. Douglas, who joined the majority opinion, later wrote that "fine American citizens had been robbed of their property by racists—crimes that might not have happened if the Court had not followed the Pentagon so literally."[3] Finally, in 1988, Congress officially apologized for the episode, and approved small but symbolically important reparations payments to those victims who were still alive.

The history of race relations in America presents the problem of majority rule and minority rights in its starkest form. African Americans were transported to the American colonies as slaves; their descendants were freed by law but still face many social and economic obstacles. Native Americans were pushed off their lands, and many were massacred in the name of progress. Asian Americans and Latinos have faced prejudice and exploitation.

Other groups too have faced discrimination at the hands of those with political and economic power. Until the 1970s, sex discrimination was permitted by the courts and encouraged by a variety of government programs. Children born out of wedlock, foreign nationals, the mentally ill, the disabled, gays and lesbians, and members of small and unpopular religious sects have all faced hostility and prejudice not because of what they do but simply because of who they are.

This legacy of discrimination and exploitation has not disappeared. Yet America in the 1990s can boast of substantial progress, both in law and in public opinion. All three branches of the federal government have cooperated to fight discrimination in education, employment, and housing. More and more minority and female candidates are running for, and winning, public office. The media and Americans in general have shown a growing awareness of the problems of minority groups.

This success has not come cheaply, however. Progress in civil rights has at times produced a dangerous backlash, especially when economic times turn difficult. Fire-breathing orators fan the flames of bigotry and discrimination, while thoughtful critics argue that an overemphasis on group membership and group status divides society and threatens to undermine individual rights and responsibilities.

This chapter explores the complex and emotional area of civil rights in law and politics. Because the current debate cannot be understood except in the context of what came before, its approach is largely historical. Its goal is to encourage thoughtful discussion and debate of some of the most difficult and contentious issues facing the United States today.

Questions to Keep in Mind

- ***How does the American constitutional system protect the rights of racial minorities and other minority groups? How successfully does the system balance majority rule and minority rights?***
- ***What parallels exist between the civil rights movement and the women's rights movement? Between the struggles of African Americans and those of other racial and ethnic minorities, including Asian Americans and Native Americans?***
- ***How does the Supreme Court decide when racial classifications are appropriate? When gender classifications are appropriate?***

Basic Concepts ★★★★★★★★★★★★★

Definition of Civil Rights

The term **civil rights** refers generally to questions of equality under law, especially those regarding race, ethnicity, and gender. Originally applied to the rights of African Americans, the term has now been expanded to include any group disadvantaged by its minority status, and also to women, who, though technically a majority, have historically been excluded from positions of power and influence in the public and private sectors.

The Constitution and Equality

The Fourteenth Amendment—added to the Constitution after the Civil War largely to protect the rights of the freed slaves—guarantees to everyone "the equal protection of the laws." On the surface these words seem straightforward enough; they would appear to require simply that the government treat all persons equally under the law. In fact, the Equal Protection Clause is difficult to interpret and apply. Much of our current understanding of the equal protection requirement stems from a series of Supreme Court decisions dating back just half a century.

The difficulty for the Court is that government policies, by definition, treat different people differently. A person who carries out a premeditated murder is not treated the same way as someone who kills in the heat of passion. The admissions office of a state university treats a student with an SAT score of 1500 differently from an applicant who scores 1000. A wealthy citizen is taxed at a higher rate than a poor one. It is the very purpose of law to classify individuals according to their conduct or status, and to treat them differently on that basis.

You may or may not approve of the classifications noted in the preceding paragraph, but all of them are legal under the Constitution of the United States. The law requires that persons who are "similarly situated" be treated similarly, but it allows wide latitude for deciding who is similarly situated in any particular circumstance. Some forms of government classification, however, are unconstitutional under the Fourteenth Amendment. The problem is to determine which ones.

In general the courts require that all government classifications be "rational"—that is, that they be *reasonably related to some legitimate governmental purpose.* This is a very weak standard that allows for almost complete discretion on the part of Congress and the state legislatures. An age twenty-one drinking limit, for example, is reasonably related to the state's desire to cut down on traffic accidents; an age twenty or twenty-two limit might be better, but the courts leave that judgment up to the legislature. The government need not show that its classifications are perfect or even optimal (some nineteen-year-olds, surely, are more responsible drinkers than many forty-year-olds). It need only show that they are reasonable.

Some types of government classification, however, call for a higher judicial standard. When the government classifies on the basis of race or religion, for example, its actions raise immediate suspicions of illegal discrimination. Such classifications are known as **suspect classifications** and give rise to **strict scrutiny** by the courts. Under the strict scrutiny

test, a suspect classification is presumed to be illegal unless the government can demonstrate that it has very good reasons for its actions, and can be justified only if the government demonstrates that the classification is *necessary* to serve a *compelling* interest—a very high standard indeed.

How do the courts decide what classifications are suspect? At least three factors weigh into the decision:



"I hate* everybody, *regardless of race, creed, or place of national origin!"

- *A tradition of stereotyping and discrimination.* Classifications that reflect traditional stereotypes or that have traditionally been used as the basis of unfair treatment are inherently suspect. These include race, religion, and gender.
- *Impossibility of change.* Society has recognized that individuals should not be penalized for characteristics over which they have no control, such as gender or race. But impossibility of change does not guarantee suspect status—consider age, which forms the basis of many government classifications. And some factors which can be changed (such as religion) are nonetheless suspect.
- *"Fundamental" characteristics.* Classifications that affect aspects of human personality that are judged fundamental to our existence and well-being are more likely to be treated as suspect. Thus gender is accorded a protected status, whereas hair color, eye color, and height are not.

So far the Supreme Court has recognized four suspect classifications: race, religion, illegitimacy (being born to unmarried parents), and alienage (not being an American citizen). It also imposes strict scrutiny when government classifications touch on a fundamental interest such as privacy or free speech. Gender is considered to be a "semisuspect" classification—laws that distinguish between men and women are subjected to a judicial test in between strict scrutiny and the minimum rationality requirement. The Supreme Court has refused to declare either sexual orientation or wealth to be suspect classifications.[4]

Note that although the Equal Protection Clause applies only to the states, the Supreme Court has held that the Fifth Amendment's Due Process Clause imposes essentially the same requirements on the national government.

The Perennial Challenge of Race Relations in America

Any discussion about civil rights in America must begin with the issue of race. Combating racial discrimination was the original purpose of the Fourteenth Amendment, and is at the core of modern efforts to define and enforce civil rights. Moreover, despite decades of progress in fighting racial discrimination in every area of American life, race remains a fundamental and troublesome line of division in American politics and society.

Race Relations Before the Civil War

The first African slaves were brought to the United States in the 1600s. By 1787 the slave population had grown to around seven hundred thousand, mostly in the South.[5] Already there was considerable controversy over slavery, and much agitation on both sides over its future. In July 1787—during the Constitutional Convention—Congress passed the **Northwest Ordinance**, which banned slavery in the area now encompassing Ohio, Indiana, Illinois, Michigan, and Wisconsin. But that victory for the antislavery forces did not mean they had the strength to abolish slavery. Of the original thirteen states, only Massachusetts, New Hampshire, Vermont, Rhode Island, and Connecticut had even begun to abolish slavery by 1787.

Slavery and Race in the Constitution of 1787 Even antislavery delegates to the Constitutional Convention realized that the Constitution was doomed unless the slavery issue was put off until later. The original Constitution dealt with slavery only three times, and never by name. It gave Congress the authority to abolish the slave trade, but only after 1808; provided for slaves to be counted as three-fifths of free persons for purposes of taxation and representation in the House of Representatives; and declared that any slave who escaped into a free state would not become free but would be returned to his or her owner.

By not abolishing slavery, of course, the Constitution condoned its continued existence. In the 1840s, in fact, the abolition leader William Lloyd Garrison denounced the Constitution as a "covenant with death."[6] Whether the Framers' decision to accept the existence of slavery was a sign of moral weakness or a legitimate exercise in political pragmatism is still debated.

Growing Tensions In the seven decades between the adoption of the Constitution and the outbreak of the Civil War, the nation came face to face with the slavery question on many occasions. Each time, the nation's political leadership was able to diffuse the tension before it could develop into a full-fledged crisis.

Of the original thirteen states, six—Delaware, Maryland, Virginia, the Carolinas, and Georgia—accepted and supported slavery up to and during the Civil War. Because slavery was clearly sanctioned by the Constitution, critics focused on isolating the slave states by fighting the extension of slavery to new states and territories. The proslavery forces, meanwhile, struggled to extend slavery in the same way, by bringing into the Union new states and territories that supported the practice.

Congress's solution was to maintain a rough balance of free and slave states. The precedent was set with the **Compromise of 1820**, which allowed Missouri to join the Union as a slave state and Maine to come in as a free state. The Compromise also banned slavery in the northern territories of the west while permitting it in the southern territories, with the assumption that the states eventually carved out of the territories would be divided the same way. A similar compromise was worked out in 1850, when the territorial question again threatened to blow the nation apart. Congress also gave in to pressure from the slave states by passing and then strengthening the **Fugitive Slave Act**, which required every state to return fugitive slaves to their home states.

The* Dred Scott *Case Eventually this compromise strategy began to break down. The final blow came in 1857, when the Supreme Court handed down its notorious decision in the case of ***Dred Scott*** v. ***Sandford***.[7]

Dred Scott, a slave living in Missouri, sued for his freedom in federal court, arguing that he had become a free man when his master took him into Wisconsin territory, where slavery was prohibited. The principle Scott relied on—"once free, forever free"—had already been accepted in the courts of England.

The Court rejected Scott's argument, and went much further. Chief Justice Roger B. Taney's long and complex opinion made a number of sweeping points, but the two most important were these:

- Scott's case could not be brought before the federal courts. The Constitution gives the right to sue in federal court only to *citizens of the United States*, Taney ruled; since Missouri did not regard Scott as a citizen, he was not a citizen of the United States. Moreover, Taney declared that no state was authorized to make blacks citizens of the United States, since (in his view) the Framers did not regard them as eligible for national citizenship. In language that was widely quoted out of context, Taney wrote that the prevailing opinion in the eighteenth century was that the Negro had "no rights which the white man was bound to respect."
- Scott did not become free when he entered the territory of Wisconsin, because Congress lacked the constitutional power to declare a territory free. In other words, Taney viewed the Constitution as guaranteeing the right of slave owners to take and hold slaves to any territory of the United States.

The second argument was political gunpowder. If Congress could not ban slavery in the territories, no compromise on slavery was possible. In fact, Taney's opinion declared the Missouri Compromise of 1820 unconstitutional. It made both sides more strident and undercut all efforts at reconciliation. Just over four years later, the South seceded and the nation went to war.

The Civil War The South fought the Civil War to preserve slavery and states' rights. The North fought at first to save the Union and only later to abolish slavery. On the eve of the war, Congress proposed a constitutional amendment that would have guaranteed the existence of slavery in states where it was already permitted. The amendment was too little, too late; but as late as August 1862 Lincoln still proclaimed that his "paramount object in this great struggle is to save the Union, and is not either to save or to destroy slavery."[8]

A year later, however, Lincoln came to feel that "slavery must die so that the nation might live." Congress authorized the president to declare the slaves of convicted rebels to be free, and in September 1862 Lincoln announced the **Emancipation Proclamation,** freeing all slaves in the states in rebellion against the United States effective January 1, 1863. Although as yet Lincoln had no power over the South, the proclamation's meaning and ultimate effect were clear. Once the war was over, slavery was doomed.

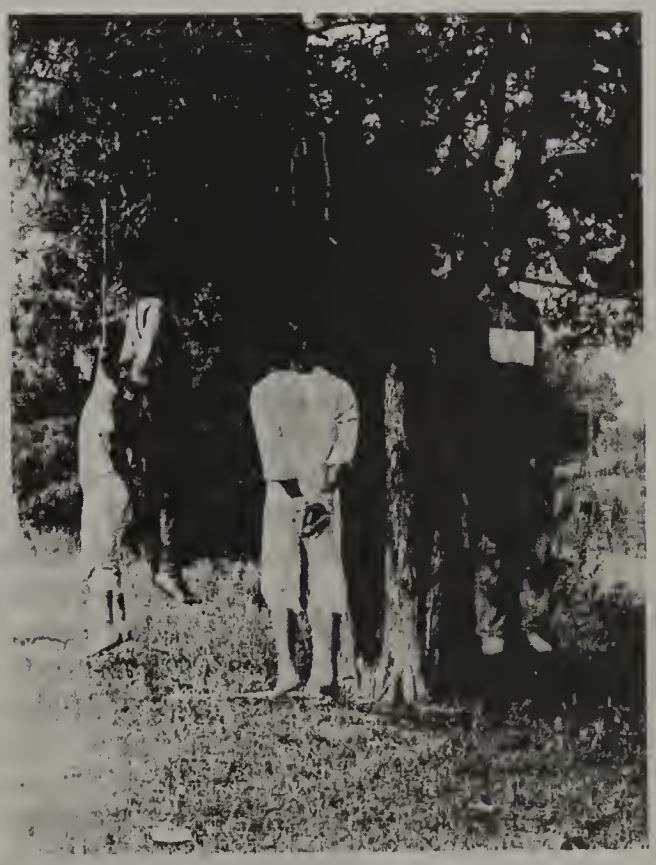
Race Relations After the Civil War

Reconstruction Laws and Amendments During the immediate postwar period, known as **Reconstruction,** Congress moved quickly to capitalize on its absolute power over the occupied southern states, approving three new constitutional amendments. The **Thirteenth**

Amendment, ratified in 1865, abolished slavery. The **Fourteenth Amendment,** ratified in 1868, extended citizenship to all people "born or naturalized in the United States"—regardless of race—and declared that all people were entitled to the "privileges and immunities of citizens of the United States," to the "equal protection of the laws," and to "due process of law." It also gave Congress specific power to enforce the amendment by appropriate legislation. The **Fifteenth Amendment,** ratified in 1870, guaranteed that the right to vote could not be denied or abridged on the basis of race.

The Fourteenth Amendment was clearly intended to make it illegal for any state government to treat African Americans as second-class citizens. In particular, it meant to outlaw the policies embodied in the "black codes" passed by many southern states in the immediate aftermath of the Civil War. These laws deprived blacks of many basic rights, including the right to testify in court, make contracts, travel, speak freely, and peaceably assemble.

Some backers of the Fourteenth Amendment intended that it be interpreted to apply the Bill of Rights to the states. Others believed that the amendment would simply ban discrimination based on race. There was no widespread agreement on the meaning of the amendment, however, and the language ultimately adopted was broad and vague. Thus the Supreme Court was free to interpret the amendment as it saw fit, and in a series of important decisions the justices ruled that the protections of the amendment were narrow and specific. In the 1873 *Slaughterhouse Cases,* for example, the Court held that the Fourteenth Amendment did not provide a general protection for all rights, but only for a few fundamental rights associated with United States citizenship. In the *Civil Rights Cases* of 1883, the Court ruled that the Fourteenth Amendment offered protection only from state-sponsored, as contrasted with privately based, discrimination.[9]



Four black sharecroppers lynched in 1908 for expressing sympathy with a black man who killed his white employer in self-defense.

The Dismal Era: 1876 to 1932

The Reconstruction Amendments held great promise for African Americans. Enforcement of these newly won freedoms was immensely difficult, however, and depended largely on the presence of the federal troops who occupied the South from 1865 to 1876. Within a few years the Union's zeal for enforcing Reconstruction waned, and political power flowed back to the former slave owners.

Between 1876 and 1930, the federal government largely abandoned the cause of southern blacks, consigning the former slaves and their descendants to a life little better than slavery. Economic conditions were horrendous, with many blacks forced into subsistence farming as sharecroppers. Educational opportunities for black children beyond the basic level were essentially nonexistent, and political freedoms were more theoretical than real. The criminal



A 1922 protest in Washington, D.C., in support of a federal antilynching bill. The protest failed; even the support of President Franklin D. Roosevelt a decade later could not convince Congress to pass this most basic of civil rights laws.

justice system was notoriously biased against African Americans, and lynchings were common—between 1889 and 1918 no fewer than 2,522 blacks were killed by racially motivated mob violence, while thousands more were intimidated into submission.[10]

The Jim Crow Laws At the center of southern racial policy in the post–Civil War era were the **Jim Crow laws,** passed in one state after another between 1890 and 1910. Named for a popular blackfaced character in an 1830s minstrel show, the Jim Crow laws were essentially a system of *apartheid*, requiring the separation of blacks and whites in virtually every area of public life. Schools and churches had been largely segregated for a long time, but the new laws required segregation in railroad cars and streetcars, hospitals and hotels, theaters, inns, and restaurants. Segregation was even extended to public lavatories and water fountains, conspicuously labeled "white" and "colored."

The Jim Crow laws were motivated largely by a desire to deny to blacks any degree of political or economic power, and to forestall what might have been a natural political alliance of poor whites and poor blacks against well-off whites. By appealing to racial prejudice and hatred, white elites were able to attract poor whites to their cause. Then they ensured their victory by systematically stripping blacks of all political power, including the right to vote.

Reducing the political power of southern blacks could not be accomplished directly because of the Fourteenth and Fifteenth Amendments. Southern political leaders therefore took an indirect approach. One approach was to levy a tax on individuals who registered to vote. Such "poll taxes" meant nothing to well-off whites but presented a serious burden to poor blacks. The primary effect of poll taxes was to exclude blacks from the electorate, but they also kept many poor whites from exercising their voting rights. Other tactics included

the use of literacy tests and of racial violence. These techniques were extremely effective. By 1910, black registration had fallen to around 15 percent in Virginia and less than 2 percent in Alabama and Mississippi.[11]

Throughout this period the federal government stood by silently, and even lent moral support to the segregationists. The critical event was the 1896 Supreme Court decision of ***Plessy* v. *Ferguson.*** *Plessy* upheld racial segregation as consistent with equal protection, as long as the facilities provided for blacks were equal to those provided for whites. This infamous separate-but-equal rule remained the law of the land until 1954.

The problem with *Plessy* was twofold. First, the Supreme Court's literal reading of the Fourteenth Amendment followed the letter of the law but violated its spirit. Segregation, according to the Court, treated both whites and blacks the same way—forbidding each to intermingle with the other. Incredibly, the Court denied that segregation implied in any way that one race was inferior to the other. Second, *Plessy* revealed an utter lack of attention to the social or political realities of the day. A trip through the South could not help but reveal that the "white" and "colored" facilities were *not* equal.

Despite its backward-looking decision in *Plessy,* the Supreme Court does not deserve to shoulder the full blame for the federal government's refusal to combat discrimination against blacks in the South. Congress passed no major civil rights legislation between 1875 and 1957, and was unable to pass even a rudimentary antilynching bill. A succession of presidents offered weak leadership on civil rights at best, and at times made matters worse. Perhaps the low point came during the presidency of Woodrow Wilson, with the imposition of Jim Crow-style segregation in Washington, D.C., and in the federal civil service.

Small Signs of Progress: 1933 to 1953

The two decades from the inauguration of Franklin D. Roosevelt in 1933 to the nomination of Earl Warren to be chief justice of the Supreme Court in 1953 marked the beginnings of real movement on the civil rights front. Progress was slow, at times imperceptible, but the events of this period did lay the foundation for the great strides that would be made in the 1950s and 1960s.

Political Trends Roosevelt's New Deal reached out to include black Americans in the Democratic coalition. This was partly a matter of principle, but mostly a result of old-fashioned politics. The many blacks who moved to the North in search of economic opportunity were welcomed by the Democratic city machines as a fertile source of votes, especially given the Republican party's apparent lack of interest in their problems and needs. The depression hit urban blacks hard and made them ready to turn away from their historical allegiance to the Republicans, the "Party of Lincoln."

It was not that the New Deal did much for civil rights. But its economic relief programs helped blacks along with everyone else, and the Democratic party, at least, seemed to have its heart in the right place. In 1935, for example, northern Democrats led a fight to pass a federal antilynching law; although unsuccessful, they were given credit for the attempt. Some New Deal programs, like the Civilian Conservation Corps and the Public Works Administration, actively worked to include African Americans.

World War II also brought momentum for change. Black soldiers, fighting in segregated units, were highly decorated, and many Americans began to wonder how these men

could be asked to fight and die for a country that treated them as second-class citizens. Many Americans also bristled at Nazi propaganda, which sought to deflect attention from Germany's racial and ethnic atrocities by reminding the world of America's race problems. These slow but definite shifts in public opinion led to small but significant victories: the Democratic party, led by President Harry S Truman, adopted a pro–civil rights position in its 1948 platform, and the same year Truman issued an executive order desegregating the army.

Despite these signs of progress, the 1940s also demonstrated just how difficult it would be to eliminate racial bias from American society. For even as the country was waking up to the discrimination faced by African Americans, it was condoning or applauding the forced evacuation of Japanese Americans from their homes on the West Coast. Truman's efforts at desegregation engendered tremendous opposition, both inside and outside the armed forces. The adoption of the civil rights plank at the 1948 Democratic Convention caused a group of southern delegates to walk out of the convention. Nicknamed the "Dixiecrats," they reconvened and nominated South Carolina governor Strom Thurmond as their presidential candidate.

Legal Trends Meanwhile, the courts were taking small steps to recognize the civil rights of African Americans. In the 1930s, lawyers from the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund began to formulate the legal strategy that would chip away at the foundations of segregation and eventually bring it down completely. Their strategy was simple: rather than challenge *Plessy*'s separate-but-equal doctrine, the civil rights lawyers used it to their own advantage. They repeatedly pointed out to the courts that separate was *not* equal in the American South, and tried to make it increasingly expensive and burdensome for the southern states to maintain truly equal facilities or to deny the existence of inequality.

The NAACP lawyers were led by **Thurgood Marshall,** who would later become the first African American justice on the United States Supreme Court. Marshall and his colleagues began with southern law schools, reasoning that the justices could readily identify with the black students involved and that a successful outcome would cause little commotion or backlash. In the first case, in 1938, the Court ruled that Missouri could not operate a law school for whites while forcing black students to attend law school out of state.[12] When several southern states responded to the Missouri decision by opening up new (and inferior) black law schools, the Legal Defense Fund went to court again. This time, in 1950, the Supreme Court held that if a state operated one law school for blacks and another for whites, the two schools had to be substantially equal—not only in facilities but also in the quality of the faculty and in the overall prestige of the school. Obviously it was impossible for a state to replicate such intangible factors as a school's prestige and standing in the community, and southern schools were forced to open up their doors to blacks and other minority students.[13]

Still the states did not give in. In Oklahoma (never a slave state, but segregated nonetheless), the state admitted a single black student to its law school, but forced him to stay in a segregated area of the library, eat at separate times in the school cafeteria, and sit in an alcove area outside the classrooms. Again the Supreme Court objected, ruling that the separate-but-equal doctrine required that black students be given an opportunity to interact as equals with faculty and students.[14]

These seemingly narrow decisions laid the groundwork for a broader assault on segregation. The Texas and Oklahoma cases established that *intangibles*, such as prestige and the creation of an atmosphere conducive to learning, would count along with such tangible factors as the physical plant and teacher salaries in determining whether separate was in fact equal. Although these early decisions changed the lives of very few black Americans, they set the stage for the Supreme Court's landmark decision in the 1954 case of *Brown* v. *Board of Education.*

Brown v. *Board of Education*

The litigation that would be known to history as ***Brown* v. *Board of Education*** was actually a combination of six cases, from five different states and the District of Columbia. Each one presented the same legal question: Did segregated education in the public schools, even in equal facilities, violate the Constitution of the United States?

Central to the black students' case was the contention that segregated schools did not and could not provide an equal education. Relying on various social science studies, the NAACP lawyers argued that segregation stamped minority children with a badge of inferiority, which in turn damaged their self-esteem and hindered their educational progress. If the Court accepted this proposition, the separate-but-equal doctrine was as good as dead, since separate facilities by definition could not provide equal educational opportunities.

Convincing the Court to overturn a sixty-year-old decision, especially in so highly charged an area as school segregation, was no easy task. And the Court might never have come around to this position had not fate intervened in September 1953, when Chief Justice Fred Vinson died suddenly of a heart attack. Vinson, a conservative from Kentucky, had been a staunch supporter of the southern position and, as chief justice, had carried great weight among his colleagues and among the public at large. The new chief justice, appointed by the Republican Dwight D. Eisenhower, was the progressive former governor of California, Earl Warren. Warren's constitutional views were largely unknown or nonexistent. On civil rights, he was best remembered for supporting the internment of Japanese Americans during World War II. Yet once Warren became convinced of the need for an antisegregation decision, he devoted all of his considerable political skills to making sure that the Court would speak with a single, unambiguous voice.

The first *Brown* decision, written by Warren and joined by all eight of his colleagues, was delivered in May 1954. Relying heavily on the social science arguments presented by the NAACP lawyers, Warren held that "separate educational facilities are inherently unequal" and thus violated the Equal Protection Clause of the Fourteenth Amendment. At the same time, Warren also struck down school segregation in the District of Columbia, even though the federal territory was not covered by the Fourteenth Amendment. "It would be unthinkable," he wrote, "that the same Constitution" that prohibited the states from establishing segregated schools "would impose a lesser duty on the Federal Government."[15]

Recognizing that the principle established in *Brown* would cause enough controversy for one day, Warren carefully put off deciding how to go about dismantling the long-established system of segregated schools. That decision would not come until a year later, in 1955, in a decision known as *Brown II.* Rejecting any drastic measures in favor of a more gradual approach, Warren accepted the position of President Eisenhower's Justice



Southern schools before* Brown *v.* Board of Education *were separate but hardly equal, as illustrated by this 1941 photo of the Mount Zion Negro School in Greene County, Georgia.

Department and ruled that the desegregation of individual school districts would be supervised by the federal district courts. Desegregation, the Court ordered, would progress "with all deliberate speed"—whatever that meant.[16]

Although *Brown* had little immediate effect on southern schools, it had great symbolic impact. Coming as it did from a united Court, it removed the last shreds of respectability from the southern system of apartheid. The shock waves it set in motion would resonate well into the 1960s and beyond.

The Civil Rights Movement and Southern Resistance

The response to *Brown* in the Deep South—Virginia, the Carolinas, Georgia, Alabama, and Mississippi—ranged from massive resistance to deliberate foot-dragging. There were also sporadic outbreaks of violence, including murder, bombings, and beatings, throughout the South. These tactics were effective: in 1964, ten years after *Brown*, 98 percent of black students in the South still attended segregated schools.[17] The border states, meanwhile, made some progress toward implementing the *Brown* decree. Paradoxically, therefore, the first major confrontation over desegregation came not in the Deep South but in Little Rock, Arkansas.

What the Arkansas officials did was simple enough. When twelve black students tried to enter the doors of Central High School in August 1957, public officials—including the governor—blocked the doors. The students' legal representatives went back to federal court, and their case was heard in an extraordinary special session of the United States Supreme Court. The Court unanimously reaffirmed the *Brown* decision and ordered the students admitted immediately. When Arkansas officials still balked, President Eisenhower grudgingly sent in federal troops to enforce the court's order.

The Little Rock crisis marked a major turning point in the history of the civil rights movement. Eisenhower's decision to commit federal troops put the full weight of the United States government behind the *Brown* decision. It would be years before the White House and Congress would take positive action on their own, but the Court was no longer alone in its struggle to end racial discrimination under the law.

The Civil Rights Act of 1957 As the first congressional civil rights act since 1875, the Civil Rights Act of 1957 added to the momentum for real reform. The act did not make major changes in law, but it did put Congress back into the civil rights arena and provided

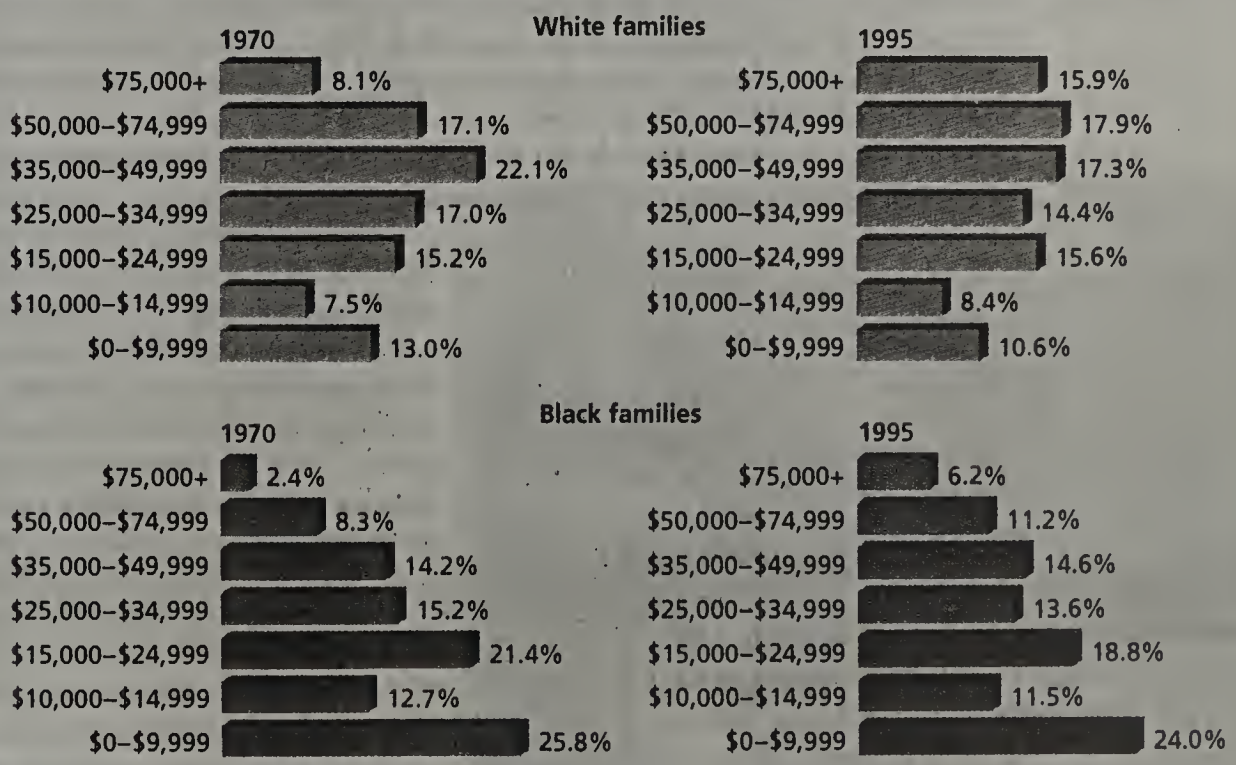
ECONOMICS AND POLITICS



The Racial Income Gap

Underlying the politics of civil rights is the enormous economic disparity between whites and blacks. For all the progress in civil rights law, the racial income gap has increased sharply over the past three decades. These charts provide a statistical summary of the economic problems facing racial minorities. As you examine them, think about how these numbers may have been affected by the history of race relations in the United States.

Figure 5.1 **Income Distributions in 1995 Dollars, 1970–1995**



SOURCE: Adapted with the permission of Scribner, A Division of Simon & Schuster from *Two Nations* by Andrew Hacker. Copyright © 1992 by Andrew Hacker.

a building block for later legislation. The bill established the Civil Rights Commission and the Civil Rights Division in the Justice Department, and gave the federal government the power to bring suits on behalf of those denied the right to vote on account of race.

From the Courts to the Streets: The Civil Rights Movement The civil rights movement was active not only in law but also in politics. A major player was the Southern Christian Leadership Conference (SCLC), led by the Reverend **Martin Luther King, Jr.** The SCLC's approach was to combine "direct action" with nonviolence—a combination that generated pressure for change, put advocates of segregation on the defensive, and created much sympathy for the protesters. The SCLC strategy was first put into place in 1955 in the Montgomery (Alabama) bus boycott—a mass protest inspired by the refusal of a black woman named Rosa Parks to give up her bus seat to a white man. "We are not here advocating violence," King declared in Montgomery. "The only weapon that we have in our hands . . . is the weapon of protest."[18] The protesters' nonviolence stood in sharp contrast to the violence practiced by some of those on the other side.

I still have a dream. It is a dream deeply rooted in the American dream. I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident; that all men are created equal."

—Martin Luther King, Jr., *I Have a Dream* speech, August 1963

A much broader protest movement was sparked by the 1960 sit-ins, which began when four black students at North Carolina Agricultural and Technical State University defied segregation laws and asked to be served at the local Woolworth's lunch counter. The sit-in movement spread across the South, resulting in thousands of arrests and jailings. The protesters stuck to their strict code of nonviolence, and regarded jail time as an opportunity to continue their crusade.

The 1960 sit-ins inaugurated a series of actions designed to publicize the injustices forced on southern blacks. The election of John F. Kennedy later that year gave hope to many blacks—the new president was personally opposed to segregation and had won his office with the strong support of black voters—but the new administration was cautious to a fault. Kennedy refused to ask Congress for sweeping civil rights laws and took little action to protect civil rights protesters in the South.



The Reverend Martin Luther King, Jr., presents his "I Have a Dream" speech at the March on Washington in August 1963.

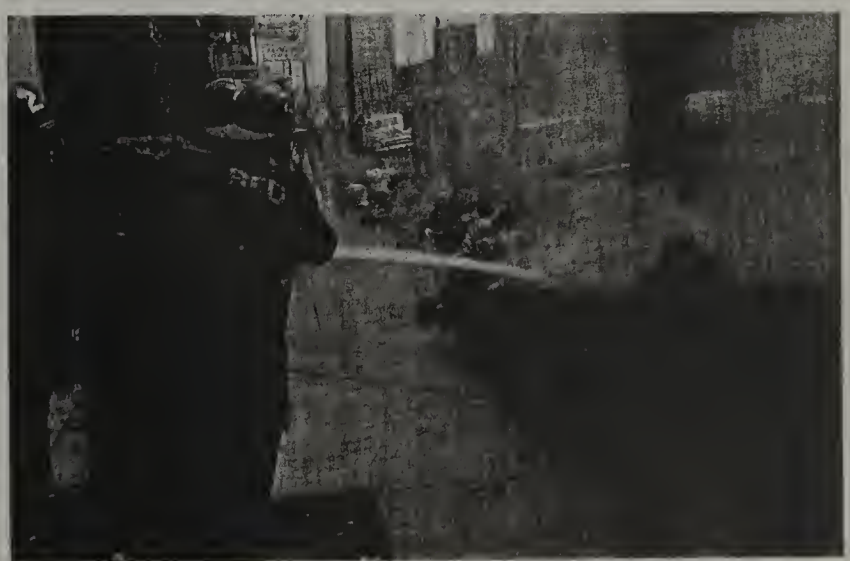
Civil rights leaders kept up the pressure, however, focusing in April 1963 on the militantly segregationist city of Birmingham, Alabama. Again led by King, the protesters were greeted by massive arrests—including of King himself—and brutal violence. Pictures of police officers attacking unarmed men, women, and children were splashed across national newspapers and featured on network news shows. The publicity forced President Kennedy to put civil rights on the front burner, and he sent Justice Department officials to Birmingham to arrange negotiations. The city quickly capitulated, agreeing to desegregate a wide range of public facilities. The success of the Birmingham march prompted a series of similar protests that summer, capped off in August 1963 by the

March on Washington, in which some 250,000 Americans went to the capital to demand civil rights. It was here that King delivered his famous "I Have a Dream" speech.

In the midst of these marches and demonstrations, President Kennedy at last agreed to submit a major civil rights bill to Congress. Kennedy's proposal would have banned segregation in hotels, restaurants, theaters, retail stores, and other public facilities. It would have strengthened the federal government's role in enforcing civil rights and toughened laws designed to secure voting rights for blacks. Civil rights leaders still faced an uphill climb in overcoming the opposition of southern whites, however, especially in the Senate, where the rules made it possible for a determined minority to stretch out debate and kill the bill. The fate of the bill was still an open question when Kennedy was assassinated on November 22, 1963.

In one of those strange quirks of history, the new president was perfectly poised to push through what became the Civil Rights Act of 1964. Lyndon Baines Johnson was a white southerner, whose support of the bill carried great symbolic weight—it could no longer be claimed that the bill was being foisted on the South by northern outsiders. Moreover, Johnson's connections in Washington were extraordinary. As a former majority leader of the Senate, he knew everyone and everything on Capitol Hill, and was prepared to use his knowledge to get his way politically. Moreover, Johnson was able to present the Civil Rights Act as a memorial to John F. Kennedy. Few bothered to remember that Kennedy's support of civil rights had been lukewarm until just months before his death.

The Civil Rights Act of 1964 and the Voting Rights Act of 1965 Together, the **Civil Rights Act of 1964** and the **Voting Rights Act of 1965** are the two most important pieces of civil rights legislation ever enacted. The 1964 law represented an all-out attack on racial segregation and discrimination. Despite the Supreme Court's 1883 decision in the *Civil Rights Cases,* Congress endeavored to prohibit segregation and discrimination in any business that served the public, in employment and labor unions, in all public facilities, especially schools, and in any state program that received federal funds. The 1965 Voting Rights Act banned literacy tests and other devices that had kept blacks from the voting booth; permitted federal officials to take over the task of registering voters; and required Justice Department approval (or "preclearance") for any local or state regulations that established new voting requirements or procedures. (The Act applies only in states that have a history of voting discrimination.) The United States Supreme Court quickly upheld both the Civil Rights Act and the Voting Rights Act.[19]



Firemen blast civil rights protesters during the civil rights rally in Birmingham, Alabama in 1963. Official violence contrasted sharply with the nonviolent tactics of the protesters, and generated much sympathy from those who watched on the relatively new medium of television.

A key aspect of the Voting Rights Act became apparent only later, after judicial interpretation of its provisions on preclearance. Some southern states tried to dilute the impact of the Voting Rights Act by replacing single-member legislative districts with multimember or at-large districts. The

purpose was clear—a five-member council in a city where one district was predominantly black might elect one black representative; if elections were at-large, no black candidate could get a majority. In *Allen* v. *State Board of Elections*, decided in 1969, the Court held that such changes were covered by the act and thus required Justice Department preapproval.

Four years later, the full impact of the *Allen* decision became clear. Under a series of Supreme Court decisions, states were required to reapportion all legislative bodies after every census, to maintain equal representation. In the 1973 case of *Georgia* v. *United States*, the Supreme Court held that such reapportionments were changes in voting procedures and were thus covered by the act. From then on, the reapportionment of all legislative bodies in any state covered by the Voting Rights Act was brought under the supervision of the Justice Department and the federal courts.[20]

With the full weight of all three branches of the federal government behind the civil rights movement, African Americans at last began to see progress across the South and the nation.

From Desegregation to Affirmative Action

Ending discrimination under the law did not immediately solve the problems of black Americans. The report of a federal study commission in 1968 summed up the extent of the challenge: "Our Nation is moving toward two societies, one black, one white—separate and unequal."[21] The status of school desegregation at that time underscored the problem with an approach that aimed merely to eliminate discrimination on paper. More than a decade after *Brown*, most school districts in the Deep South were still substantially segregated.

Busing Frustrated by a decade of noncompliance with its decision in *Brown*, the Supreme Court at last began to demand real progress. The key decision came in 1971, when the Supreme Court approved the use of **busing** as a way to achieve desegregation of southern school districts.

What the Court now required was known as **integration,** implying an active process of racial mixing, rather than **desegregation,** which suggested only the elimination of laws that required the separation of the races. Busing to achieve integration was first approved in Charlotte, North Carolina, but the idea quickly spread throughout the South and then across the nation. Under the law, courts could order desegregation even in states where segregation was not explicitly required by law, as long as they found that the government had intentionally brought about segregated schools. Court-ordered relief could be granted, for example, if state officials had repeatedly redrawn school attendance zones to exclude black students from predominantly white schools, or had intentionally built new schools in the middle of segregated areas rather than in boundary areas. Such conditions were found in city after city throughout the 1970s, and court-ordered busing became commonplace.

"Sitting at the table doesn't make you a diner, unless you eat some of what's on that plate. Being here in America doesn't make you an American. Being born here in America doesn't make you an American."

—Malcolm X, 1965

Busing sparked great controversy in the 1970s, producing strong protests and, in some cities, even violence. Within a few years, however, much of the controversy had dissipated. In many cities, the mass migration of whites to suburban school districts made busing ineffective. In other places, successful alternatives to busing created moderately integrated school systems and thus reduced or eliminated pressures for stronger measures. Across the country, moreover, busing and in-



In 1997, Bill Clinton unveiled the President's Initiative on Race, a year-long series of events involving "thoughtful study, constructive dialogue, and positive action" to create "an America based on opportunity for all, responsibility from all, and one community of all Americans."

tegration issues were pushed into the background as newer issues, such as drugs, crime, and education reform came to the fore. In recent decisions the Supreme Court has held that schools that were once desegregated but become segregated again because of shifting residential patterns are no longer subject to court-ordered efforts at integration. These decisions have all but ended the era of forced busing.[22] Still, many communities continue to operate under policies instituted in the 1970s and 1980s.

Fifty Years of Civil Rights

The past fifty years have seen unprecedented changes in the legal and political status of African Americans. Yet the civil rights movement can hardly be called a complete success.

Economically, African Americans remain far behind their white counterparts (see the box on page 121). The problems of crime, unwed mothers, teenage pregnancy, and drug and alcohol abuse all remain more acute among blacks than whites. Discrimination in employment and housing remains, and even today many urban schools are highly segregated.

The history of Topeka, Kansas, since the 1954 *Brown* decision is typical. Although there has been much progress—including a significant expansion in the African American middle class—huge areas of the city remain poor, unsafe, and largely black. Segregation became so severe that in 1979 the American Civil Liberties Union went back to court to demand new action to integrate the public schools. Joining the lawsuit, ironically, was Linda Brown, whose father had brought the original *Brown* case twenty-five years before.

"It was unrealistic to expect that we could overcome all these entrenched problems, even in forty years," commented NAACP lawyer Ted Shaw on the fortieth anniversary of the original *Brown* case. Although his comments were directed specifically at the school desegregation problem, in a way they sum up the entire civil rights movement. "It's not too late to turn this around," Shaw said. "The question is whether the commitment is there."[23]

The Civil Rights Movement Extended

The civil rights movement provided a model for other disadvantaged minorities to follow. Court decisions and congressional statutes could be modified and extended, protest marches and other forms of political expression could be copied or adapted. Every group is different, however, and faces unique historical and contemporary challenges. Some offspring of the civil rights movement have therefore fared better than others.

Women

Women who grew up in the 1980s and 1990s may find it difficult to imagine the level of discrimination faced by women as recently as fifteen or twenty years ago. Women must still cope with a variety of forms of discrimination and sexual harassment—including the "glass ceiling," a term used to describe the real but barely visible barrier that limits opportunities for advancement to top professional and management positions. But American society and especially the American workplace is a far more egalitarian place than it once was.

Women have been seeking equal rights under the law and an equal role in American public life since the days of Abigail Adams. The first organized effort on behalf of women's rights was a convention held in 1848 at Seneca Falls, New York, which ended with the adoption of resolutions calling for equality and expanded rights for women. Two decades later, advocates of voting rights for women formed the National Women's Suffrage Association. Led by Susan B. Anthony, the suffrage movement at last achieved victory in 1920, with the adoption of the Nineteenth Amendment. Meanwhile, reformers worked in Congress and the state legislatures for the passage of laws designed to protect women from hazardous working conditions and to provide minimum wages and other basic rights on the job.

For the most part, however, courts and legislatures continued to deny women equality under the law. State laws routinely discriminated against women, barring them from certain professions, assuming their inability to handle complex financial affairs, and encouraging them to avoid public life altogether and concentrate on home, family, and children. In the 1948 case of *Goesart* v. *Cleary*, for example, the Supreme Court upheld a Michigan law that banned women from working as bartenders unless their fathers or husbands owned the bar. "The fact that women may now have achieved the virtues that men have long claimed as their prerogatives and now indulge in vices that men have long practiced," wrote Justice Frankfurter, "does not preclude the States from drawing a sharp line between the sexes."[24] In 1961 a like-minded Court sustained a Florida law that allowed women to serve on a jury only if they made a special request. "Woman," the Court declared, "is still regarded as the center of home and family life."[25]

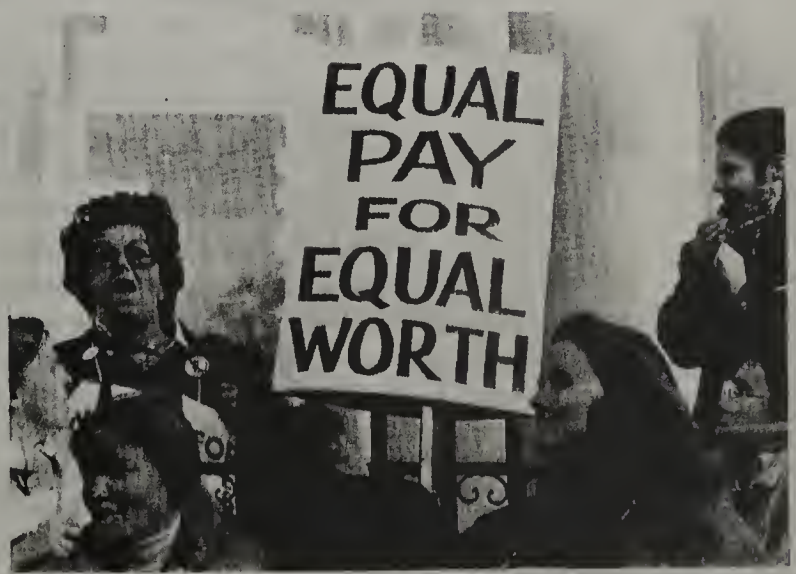
The modern women's movement—also known as feminism—dates from the early 1960s. The movement was driven by rapid changes in the role of women in American society, especially the significant growth in the number of married women in the workforce and in the number of women attending and graduating from college. Widespread availability of contraception and abortion also played a role, allowing women to delay or avoid having children and pursue professional careers.

The efforts of the women's movement began to pay dividends early on, especially in Congress. In 1963, for example, Congress passed the Equal Pay Act, which requires that men and women be paid the same amount for equal work. In 1964, Congress banned sex discrimination as part of the Civil Rights Act. (Ironically, the protection of women under the law was originally intended as a joke, a way of bringing the entire act into disrepute. But the law did pass, and in later years was enforced by the courts with gusto.) Other important laws passed by Congress include the Education Amendments of 1972 (known as Title IX of the Civil Rights Act), which banned sex discrimination in education. In 1971, Congress finally approved the **Equal Rights Amendment,** which would have changed the Constitution to prohibit the denial of "equality of rights under law . . . on account of sex." The ERA was intensely controversial, and was ultimately defeated, but its impact was still substantial: it brought the problem of sex discrimination to public consciousness and helped define the terms of the debate.

In the early 1970s, meanwhile, the Supreme Court began to take a tougher line on sex discrimination. Previously it had allowed the states to make distinctions based on sex as long as they were minimally reasonable. Now it began to insist that such distinctions be more carefully justified. In *Reed* v. *Reed* (1971), the Court struck down a law that gave preference to men over women in deciding who was to become the administrator of an estate. In 1973 the Court invalidated a federal law that allowed male soldiers to claim their wives as dependents automatically but required women soldiers to prove that their husbands were dependent on them for support. The old assumptions and stereotypes, once sufficient for justifying discriminatory laws, were no longer enough.[26]

For a while it appeared that the Court would simply declare gender, like race, to be a suspect classification. Instead the Court adopted a slightly weaker standard. Classifications based on sex are "semisuspect": they can be justified only if they are "substantially related" to an important government interest. The real meaning of this middle-tier standard became clear only through a series of Court decisions throughout the 1970s, 1980s, and 1990s. Essentially it means that the Supreme Court will strike down laws that discriminate against either sex on the basis of "the mechanical application of traditional, often inaccurate, assumptions about the proper roles of men and women."[27]

Thus the Court set aside an Oklahoma law that allowed women to drink beer at age eighteen but required men to wait until age twenty-one; forced Mississippi to open up its all-female nursing college to men; disallowed an Alabama rule that only men could be required to pay alimony; and put an end to males-only admissions policies at state-supported military colleges. In a similar spirit, the Court ruled in 1986



Members of Local 34 of the Federation of University Employees—a predominantly female union of clerical and technical workers at Yale University—strike for pay equity, arguing that "woman's work" should be valued on the same basis as traditionally male jobs. The university eventually agreed to restructure salaries and end discrimination against women who take maternity leave.

that sexual harassment in the workplace is sex discrimination under the Civil Rights Act.[28] But the Court has also allowed Congress to mandate draft registration for men alone (reasoning that the rule was appropriate given Congress's exclusion of women from combat).

That rights are secured by law does not mean that discrimination has disappeared, of course; women still earn less than seventy-five cents for every dollar earned by men. But women (and men) who are the victims of arbitrary discrimination can now rely on a variety of legal remedies that simply did not exist two decades ago. Fear of such lawsuits, moreover, has made most employers, schools, and public institutions well aware of the need to change their attitudes and actions to avoid litigation.

Women in Politics Women have also made strides in the political arena. In the past two decades, the number of women in Congress, for example, has grown from 15 to 59 (just over 10 percent). The number of women serving in state legislatures has grown from 604 to 1,598 (over 20 percent of the total).[29] Since 1981, America has seen an extraordinary number of firsts for women in public life: the first female Supreme Court justice (1981), vice presidential candidate (1988), and attorney general (1993), to name just a few.

It is too soon to conclude that women have achieved true equality in the public sector. Besides all of the other problems they must face, women also must confront the slowly changing attitudes, of both males and females, on questions related to sex equality. The sexual abuse of women in the United States Army, for example—revealed in a series of scandalous cases in 1997—stands as a clear reminder that women have a long way to go before they achieve true political and social equality with men.

Native Americans

Native Americans have suffered great hardships and indignities since the early days of European exploration and settlement. According to scholarly estimates, the Native American population when Columbus arrived in 1492 numbered upwards of 7 million people, 5 million in what is now the continental United States and 2 million in Alaska, Canada, and Greenland. Over the next four hundred years, the Native American population was steadily ravaged, first from new European diseases (including smallpox, bubonic plague, and typhoid), then from war, forced relocations, and genocide. By 1900 the Native American population had dropped to barely more than 350,000. Since then it has recovered significantly, due mainly to advances in medicine and public health. Today more than 2.75 million Native Americans live in North America. Another 4 million Americans claim some degree of Native American ancestry.[30]

Native Americans and the United States Government Until this century, the policies of the United States government were markedly hostile to Native Americans and contributed greatly to their hardships and suffering. Until 1924, most Native Americans were considered citizens of foreign countries and were not entitled to the basic rights guaranteed to American citizens. Throughout the nineteenth century, the westward expansion of the United States led to vicious wars and forced many tribes off their lands and onto reservations, where they were encouraged to give up their traditional ways of life, including language, religion, and economy.

By the early twentieth century, the United States government took a more protective approach toward the Indians, though with mixed results. Federal policy, implemented by the Of-

fice (later Bureau) of Indian Affairs, emphasized three goals: to control and regulate the use of Indian land; to improve health care; and to improve educational opportunities. In this period the government sought to assimilate Indians and make them self-sufficient, largely by selling tribal lands and distributing the proceeds to individual families. Little assimilation resulted, but many tribal cultures and support systems were disrupted, leaving families even worse off than before. Federal health care programs were only a little more effective, and Native Americans remained far below the general population in terms of life expectancy and other measures of public health. Education programs were a little more successful; although most Indian schools were underfinanced and underequipped, the illiteracy rate among Native Americans dropped sharply. The vast majority of Indians also learned English, although at some cost to the viability of native languages.

The Indian New Deal Federal policy shifted dramatically in 1934, with the passage of the Indian Reorganization Act. The government's new emphasis was on Indian self-determination and self-government. More than $100 million was spent on soil conservation, irrigation, and other programs on the reservations, and more than 1 million acres of land were added to the tribal holdings. New economic programs emphasized traditional arts and crafts, and Indian education was changed to emphasize native languages and traditions.

The Indian New Deal was not wholly successful, but it did stop the Native Americans' centuries-long decline. By the 1950s, however, the government abandoned its self-determination policy in favor of a new policy that sought to end the "special relationship" between the federal government and the tribes altogether. This so-called termination policy was extended to only a few Indian tribes, but it was spectacularly unsuccessful and sparked a strong counterreaction. By the 1960s, the termination policy had been all but abandoned.

AIM and Self-Determination Federal policy since the passage of the 1975 Indian Self-Determination Act has once again focused on tribal self-government. The government's response was largely prompted by the activities of the American Indian Movement (AIM). Modeled on the more aggressive elements of the civil rights movement, AIM sponsored a wide range of protest activities, including the occupation of Alcatraz Island; a Thanksgiving Day demonstration at Plymouth, Massachusetts, which included painting Plymouth Rock red; and the Trail of Broken Tears—a caravan of some two thousand Native Americans who descended on Washington, D.C., to state their grievances. The AIM movement culminated in an armed confrontation with federal police at Wounded Knee, South Dakota. In the end, AIM was disbanded as a national organization, although it remains strong in some local areas. But it was a critical force in making the government come to terms with Native American concerns and in creating a strong movement for

Russell Means, founder of the American Indian Movement (AIM), at Wounded Knee, South Dakota, 1973. "AIM never died, it only changed form," Means said many years later. "Anywhere Indians are standing up for themselves whether they are struggling as individuals whose basic civil rights are being denied, as peoples whose human rights are being denied, as nations whose sovereign rights are being denied, or any combination of these factors, that's where you'll find the American Indian Movement."



Native American self-determination and for the restoration of tribal cultures.[31] Its legacy was carried out by less militant but very effective groups, such as the American Indian Law Center, which provides legal and political advice and support to tribal leaders.

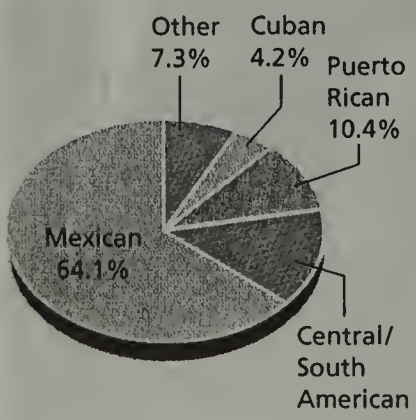
American Indians Today The legacy of four hundred years of discrimination and hardship remains a powerful force today. The average per capita income of Native Americans (including Eskimos and Aleuts) is below even that of blacks, and barely half of the average for whites. Native Americans suffer poverty not only on reservations but also in cities; in New York, for example, their average income is only 49 percent that of whites. In several states, the poverty rate among Native Americans exceeds 40 percent. In some Native American tribes, life expectancy is only forty-five years, and the leading cause of death is alcoholism.[32]

The self-determination movement does provide some hope. Native American tribes are seeking to reaffirm their rights under long-neglected treaties, and have undertaken extensive efforts to teach traditional ways of life to troubled children and teenagers. In 1994, in a dramatic and symbolic example, a Washington state judge allowed a Native American tribe to impose the traditional punishment of banishment on a desert island on two boys who would otherwise have been sent to prison.[33] Modern court decisions have upheld Native American hunting and fishing rights in territories governed by federal treaties, strengthened tribal self-government, and granted compensation for long-ago takings of Indian land and property. In recent years, however, the Supreme Court refused to allow the use of illegal drugs in Native American religious ceremonies and has required Indian tribes to comply with federal environmental regulations.

Latinos

Latinos (or Hispanic Americans) are defined not by race but by a common culture rooted in the Spanish conquests of North and South America in the sixteenth century. What draws Latinos to each other, and what separates them from Anglos and other groups, is a "larger culture of history, myth, geography, religion, education, language, and affairs of state." Although many Latinos face discrimination on the basis of skin color, last name, accent, or language, others, if they wish, can assimilate effortlessly into the larger culture.

Figure 5.2 **Hispanic Ethnicities Nationwide, 1994**



Source: United States Bureau of the Census. *March 1994 Current Population Survey.*

Latinos came to what is now the United States with Columbus, and have been here ever since. Nevertheless their numbers were small until relatively recently. From one hundred thousand or so in the mid-1800s, the Latino population of the United States grew to several million early this century. Only since the 1960s, however, have Latinos come to America in massive numbers. By 1990, the Latino population had grown to 22.4 million, an estimated 1.8 to 3.1 million of whom are illegal immigrants. The Latino population is growing nearly ten times faster than the general population.[34]

Diversity The Latino population is extremely diverse. Groups from different countries arrived in the United States at different times and under different circumstances. Each of these groups has its own history and unique cultural, economic, and political characteristics. The three largest groups are Mexican

Americans, Puerto Ricans, and Cuban Americans. Smaller groups include immigrants from Central and South America.

Mexicans began arriving in the United States in large numbers in the early 1900s. They came to escape difficult economic conditions, an ever-increasing population, and a great deal of political unrest and uncertainty. Today, Mexican immigrants are drawn largely by the demand for cheap labor, especially in the agricultural and service sectors. Mexican Americans are concentrated mainly in the Southwest, especially in Texas, New Mexico, Arizona, Colorado, and California.

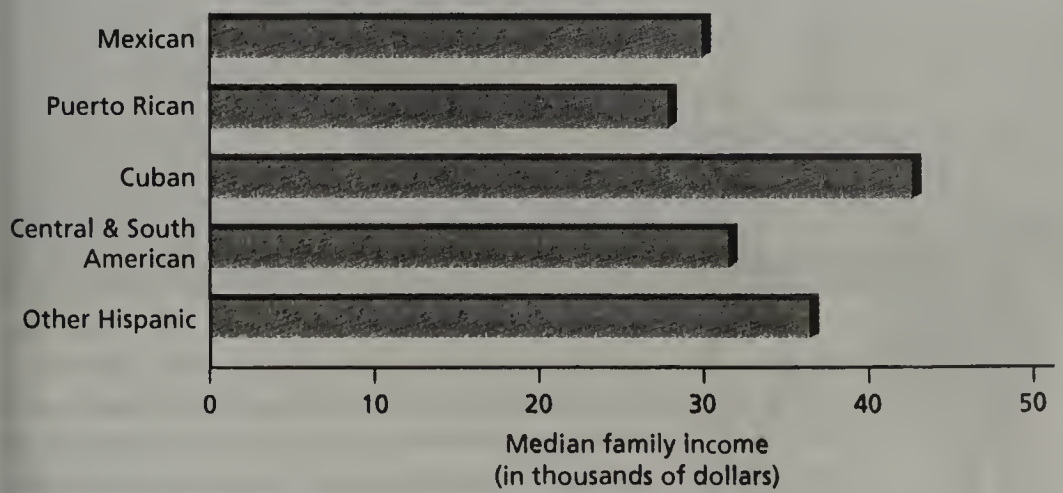
Puerto Ricans were granted American citizenship in 1917, eighteen years after the United States acquired Puerto Rico in the Spanish-American War. Thus, unlike other Latino arrivals in the United States, Puerto Ricans are not considered immigrants and are free to come and go without immigration restrictions. Puerto Ricans came to America in significant numbers only after World War II, largely in pursuit of economic opportunity. Most Puerto Ricans living in the United States reside in large cities, especially New York and Chicago.

The arrival of Cuban immigrants in large numbers dates from 1959, when Fidel Castro seized power and created a communist regime. Most went to, and stayed in, Florida. In contrast to most Mexican and Puerto Rican arrivals, Cuban immigrants tended to be well-educated, middle-class professionals. The Cuban American community in Florida now numbers over 1 million and enjoys significant economic, political, and cultural influence.

From 1959 to 1994, anyone who was able to escape the Castro regime was permitted to immigrate to the United States. Under the threat of massive immigration from Cuba, American policy was changed to restrict Cuban immigration, and Cuban refugees caught trying to enter the United States were intercepted by the Coast Guard and denied entry.

Other significant Latino groups in the United States include immigrants from El Salvador and Nicaragua.[35]

Figure 5.3 **Diversity of Income Among Hispanic Americans, 1993**



Source: United States Bureau of the Census; "Current Population Survey, 1994," published March 1994 at the following address: http://www.census.gov/population/socdemo/hispanic/finc94.txt.

Economic Conditions Cuban Americans have been economically successful, but both Mexican Americans and Puerto Ricans have faced poverty and deprivation. The average family income among Cubans, for example, is $38,144—very close to the average for non-Latino whites. The average family income of Mexican Americans and Puerto Ricans, however, is only $27,879 and $25,066, respectively—just above the average income of African Americans. Not surprisingly, Mexican Americans and Puerto Ricans are concentrated in unskilled and low-skilled jobs and suffer from high unemployment. Cuban Americans are far better represented in managerial and professional positions.[36]

Education Again with the exception of Cuban Americans, Latinos suffer from low educational opportunity and achievement. Whereas 19 percent of Cuban American adults have completed college (compared with 22 percent of whites and 12 percent of blacks), only 10 percent of Puerto Ricans and 6 percent of Mexican Americans have done so. A similar pattern holds true at the high school level. These discrepancies owe more to immigration patterns than to cultural attitudes about education.

In recent years, efforts have been made toward requiring bilingual education and preventing discrimination against Latino children in the public schools. But the struggle remains steeply uphill.[37]

Politics The Cuban American population is heavily involved in politics. Cuban Americans are overwhelmingly conservative, a result of their flight from communism and their success in the American economic environment. In foreign policy they are staunchly anti-communist and anti-Castro. All of these factors have led Cuban Americans to embrace the Republican party in large numbers.

Mexican Americans and Puerto Ricans, by contrast, are politically more akin to African Americans. Participation in politics tends to be low. Many Mexican Americans and Puerto Ricans have little faith in the efficacy of politics. The government's role as enforcer of the immigration laws makes many Latinos even more suspicious and afraid of government officials than their African American counterparts. The diversity of Latino groups, and their geographic isolation from each other, have also made it difficult for Latinos to operate effectively at the national level, although they have been able to exercise considerable influence at the state and local levels.



Immigration Issues Although many Latino families have lived in the United States for generations, overall the Latino community is an immigrant culture. As such, the Latino community faces many of the same problems faced by earlier immigrant groups. Lacking English language skills and without much economic muscle, millions of Latinos work in low-wage, low-status jobs, with little hope of advancement. Millions are in the country illegally. Illegal aliens cannot work legally, and are therefore especially vulnerable to exploitation and abuse. Fur-

GLOBAL PERSPECTIVES



Immigration and Civil Rights

The large inflow of legal and illegal aliens from Latin America has fueled a long-standing debate over the status of noncitizens under American law. Feelings run strong on all sides of the issue. Not surprisingly, neither the Supreme Court nor Congress has followed a consistent policy.

In the 1971 case of *Graham* v. *Richardson*, the Supreme Court ruled that noncitizens were entitled to the full protection of the Constitution, and that the denial of welfare benefits to aliens was therefore illegal. Applying strict scrutiny, the Court held that states could discriminate against aliens only under exceptional circumstances, when such discrimination was necessary to serve a compelling state interest. The *Graham* decision followed the logic of earlier decisions on race discrimination: aliens, like racial minorities, are the victims of widespread stereotyping, prejudice, and discrimination that makes any law singling them out inherently suspect.

In the years since *Graham*, the Court has created two important exceptions. In a long line of cases beginning in 1973, the Court has upheld restrictions on aliens in public employment. Thus states can exclude aliens from jobs as state troopers or public school teachers, and from the civil service. Then, in the 1982 case of *Plyler* v. *Doe*, the justices indicated that states would have an easier time discriminating against illegal aliens. Although *Plyler* struck down a Texas law banning illegal aliens from the public schools, the Court's decision stressed the special circumstances involved in the case of children, suggesting that other forms of discrimination might be permissible.

Congress has also sent out mixed signals. Attempts to restrict illegal immigration pit those seeking to protect American jobs and taxpayers' money against both Latino groups and employers who depend on cheap immigrant labor. Attempts to enforce immigration laws strictly run the risk of trampling on the rights of aliens and citizens alike. Immigration raids, for example, can interfere with privacy rights; thus a crackdown on Islamic groups suspected of links to terrorism can trample on legitimate First Amendment speech and religion interests. The result has been a policy that has talked tough on immigration while offering only sporadic and ineffective enforcement.

For legal aliens, the United States offers a standard of living far in excess of what can be found in any Latin American country. For illegals, America may still represent a better deal than they have at home. Jobs can still be found in many border areas dependent on illegal workers. Medical care and education are still available. Perhaps most important, the fear of capture or harassment by immigration agents is often far outweighed by the hope of building a better life in the United States.

There is one other factor to consider. The Constitution itself specifies that all persons born in the United States—whether their parents are here legally or illegally—are citizens of the United States. That citizenship is permanent, can never be taken away, and can be passed on to children and grandchildren. Like millions of other immigrants before them, the prospect of a better life for their children often outweighs all other considerations.

SOURCES: Thomas Weyr, *Hispanic U.S.A.: Breaking the Melting Pot* (New York: Harper & Row, 1988); Linda Chavez, *Out of the Barrio: Towards a New Politics of Hispanic Assimilation* (New York: Basic Books, 1991).

thermore, they must live in constant fear of immigration authorities. In 1991 alone, more than a million aliens, most of them Latinos, were deported from the United States.

Recent trends have heightened Latinos' concerns. In 1994, for example, California passed Proposition 187, which blocks state aid to illegal immigrants and encourages state workers (including doctors and teachers) to report suspected illegals. Although a federal court struck down Proposition 187 as an unconstitutional attempt to interfere with the

federal government's authority to make immigration laws, Latinos continue to fear that Congress will pass similarly hostile legislation. Such fears are not unfounded; the welfare reform law passed in 1996, for example, cut all illegal aliens off of welfare.

Despite their unique problems, many Latinos seek to emulate the success of earlier immigrant groups, eventually reaching economic and political parity with Anglo-Americans. But Latinos also find much in common with the experiences of African Americans, who have had less success in integrating into the mainstream. Many Latinos, like many blacks, feel they have suffered from a historic pattern of discrimination. And though Latinos can be of any race, many are dark skinned and are treated as a racial minority by many whites. In any event, many Latinos believe that their path to political and economic power has been blocked by long-standing prejudice on the part of non-Latinos.

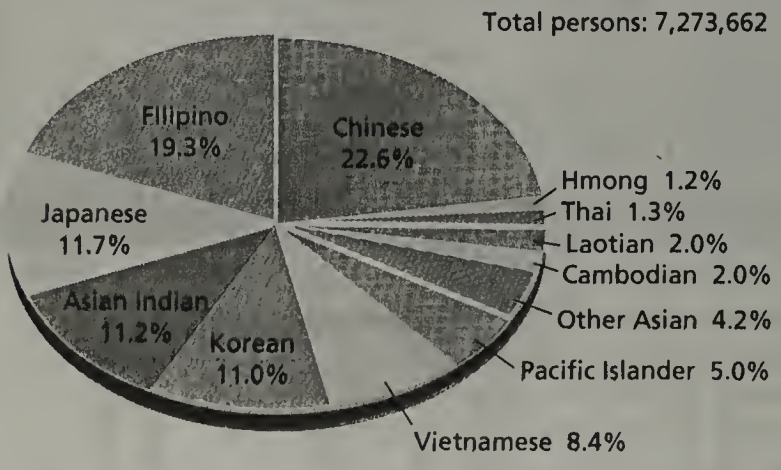
The dual identity of Latinos as both an immigrant group and a minority group has given rise to deep divisions within the Latino community. It has also led to two very different, and at times conflicting, political strategies. On the one hand, Latino interest groups lobbied successfully for protection under the Voting Rights Act. Latinos have also been included in many affirmative action programs, and have won legal protection against discrimination. On the other hand, many Latino leaders see more hope in identifying with the Anglo mainstream. To such leaders, the road to success lies with education, self-improvement, and economic development.

One strategy that both sides can agree on is to increase political participation among Latinos, who currently register and vote at the lowest levels of any comparable group.

Asian Americans

Asian immigrants have been coming to the United States since before the Civil War. Imported to serve as cheap labor, the first Asian Americans provided the raw labor needed to build the transcontinental railroads. Later they worked in American factories and on American farms. They also worked on Hawaii's sugar plantations, both before and after Hawaii was annexed to the United States in 1896. All told, between 1850 and 1930 Asian immigrants to the United States and Hawaii numbered more than 400,000 from China and nearly as many from Japan. Smaller numbers came from the Philippines, Korea, India, and elsewhere.[38]

Figure 5.4 **Asian-American Ethnicities**



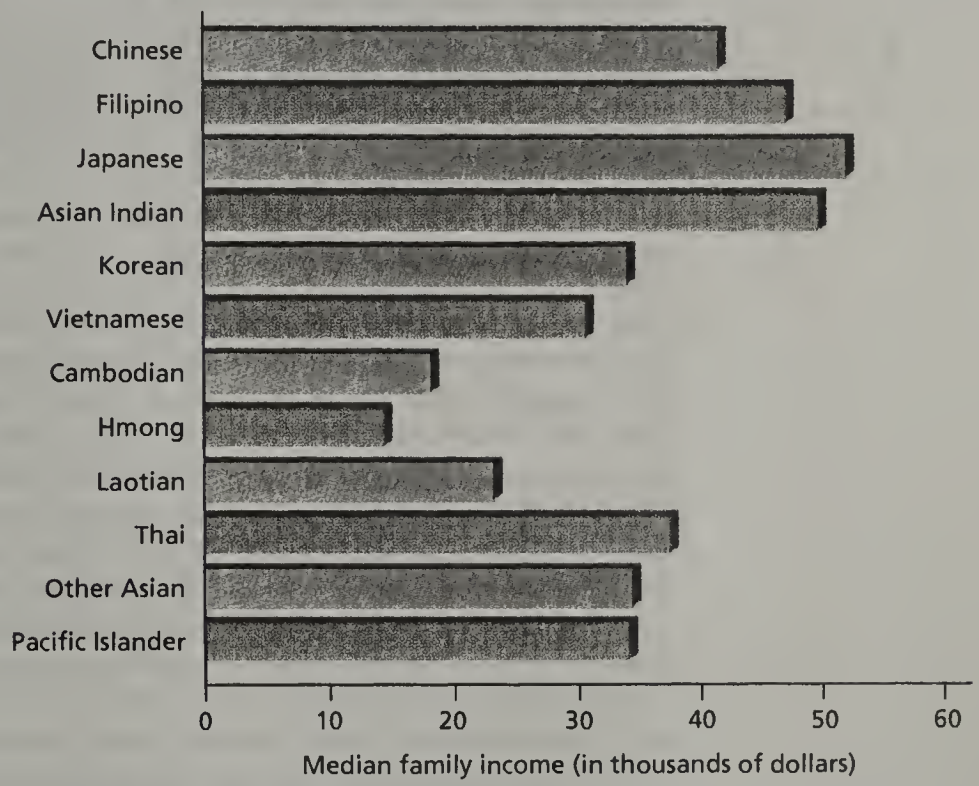
SOURCE: United States Bureau of the Census, *1990 Census of Population: General Population Characteristics*, Table 48.

Asian Americans faced racial discrimination and economic exploitation. Far from home and without any sort of safety net, Asian immigrants were forced to work under difficult and degrading conditions. Still, Asians continued to come to America, hoping, like all immigrants, to find a better life for themselves or at least their children.

Although Asian workers proved useful and profitable for American industry, American labor quickly came to perceive them as a threat. In 1888, acting on a combination of racial hostility and economic protectionism, Congress passed a series of Chinese Exclusion Acts, which banned the im-

migration first of Chinese laborers and then of "all persons of the Chinese race," with only a handful of exceptions. One result was a dramatic increase in Japanese immigration, although the Japanese fared little better than their predecessors. In 1913, for example, California banned Japanese immigrants from land ownership; in 1922, the Supreme Court ruled that non-Caucasians were ineligible for naturalized American citizenship. Finally, in 1924, Congress passed a new immigration bill that greatly restricted all immigration and reduced Asian immigration to the vanishing point. The official quota for Japanese immigrants after 1924 was exactly one hundred people a year.

Figure 5.5 **Diversity of Income Among Asians and Pacific Islanders Nationwide**



SOURCE: United States Bureau of the Census, *1990 Census of Population: Social and Economic Characteristics*, Table 111.

Discrimination against Asian Americans reached its worst point during World War II, with the exclusion of Japanese Americans from California and their internment in concentration camps. In all of this, the explicit guarantees of the Fourteenth Amendment were virtually ignored.

Recent history has been kinder to Asian Americans. Since Congress reformed the immigration laws in 1965 to reverse their bias against non-Europeans, the various Asian American communities have expanded fivefold, now numbering around 5 million. Many new immigrants come with technical or professional skills and have found great opportunities in the United States. Others, however—including many refugees from Vietnam, Laos, and Cambodia—have found the adjustment to America difficult, even traumatic.

Today the Asian American communities represent an extraordinary diversity. Each of these communities is unique, and generalizations are hazardous. Each faces its own mix of special challenges and can draw on its own set of strengths and advantages.

Still, two aspects of the modern Asian American experience are worth noting. First, discrimination against Asian Americans has not gone away. Like their nineteenth-century forebears, today's Asian Americans form a distinct and easily identifiable racial minority, and are subjected to continual stereotyping. Despite much progress, they continue to conjure up irrational fears and latent prejudices in many of their fellow citizens. When non-Asians express alarm at the number of Asian Americans attending Ivy League schools, for example, they echo the fears and hostility of nineteenth-century industrial workers. Asian Americans also face discrimination from other minority groups.

Second, the Asian American communities today encompass both great success and profound difficulties. While thousands of Asian Americans attend top-level schools and reach the highest levels of American medicine, science, and industry, millions of others remain in impoverished "Chinatowns," join violent street gangs, and struggle with daily existence. Asian Americans are held up as a model minority of overachievers, yet as a group they remain underpaid, stuck in dead-end jobs, and locked out of corporate boardrooms and top executive positions.

Nontraditional Minority Groups

Over the last few decades, groups besides clearly defined racial and ethnic minorities have also demanded recognition of the discrimination they face and have at times succeeded in obtaining relief from the government. In 1991, for example, Congress passed the Americans with Disabilities Act, which protects the disabled from discrimination in schools and in the workplace. The efforts of gays and lesbians have been less successful; they continue to face discrimination on the job and in society at large, and in 1986 the Supreme Court refused to extend constitutional protection to homosexual relationships.[39]

The gay rights issue is complicated by the distinction between protected *status* and protected *conduct*, which have traditionally been handled somewhat differently by the courts. This problem was clearly faced in the debate over gays in the military, when gay and lesbian groups objected to the "don't ask, don't tell, don't investigate" policy eventually adopted by the Clinton administration. That policy ended the military's active efforts to weed out gays and lesbians, but stopped well short of accepting homosexuality as an acceptable military lifestyle.

Affirmative Action

For decades, blacks and other minorities aimed to eliminate legally sanctioned segregation and racial discrimination. Next they turned to using the power of government to discourage racial discrimination in education, employment, and housing. Unfortunately, minorities often found that hundreds of years of slavery and discrimination had created immense burdens, leaving them far behind at the starting line. A more activist approach, many argued, was necessary.

The new remedy was called **affirmative action,** a broad term used to describe any program making distinctions based on race, gender, or disability in order to promote equality. Affirmative action programs reject the idea that equality can be achieved merely through a color-blind or gender-blind approach. They can require an organization that has engaged in proven illegal discrimination to set aside a specific number of positions for women or minorities. More commonly, such programs involve setting "goals"—less definite numbers that might or might not be achieved. The legality and desirability of any particular affirmative action program may depend on exactly how it is structured, what problems it is meant to solve, and whether there are other reasonable alternatives.

Constitutionality of Affirmative Action

Legally, affirmative action drew on the lessons of the school desegregation experience. Busing, in fact, was an early example of a program that took race into account to achieve broader goals of racial equality. The color-blind approach did not work: assigning students to the school closest to their homes without regard to race simply perpetuated the segregated system. Race-conscious busing was approved by the Supreme Court in 1971 as a court-imposed remedy for an existing constitutional violation. Whether other branches of the federal or state governments could use race-specific approaches was the central question in the 1978 case of *Bakke* v. *Regents of the University of California.*[40]

Allan Bakke, a white male, was denied admission to the University of California at Davis medical school. He was rejected, he claimed, solely on the basis of race: the school had reserved sixteen out of one hundred seats in the entering class for members of traditionally disadvantaged minority groups. Bakke claimed that an explicit racial quota system, however well motivated, was unconstitutional.

The Supreme Court, agreeing that the school could not adopt a rigid numerical quota, ordered Bakke's admission. At the same time, it approved a more flexible affirmative action approach that merely took race into account as one variable among many. It was legitimate for the school to seek out a racially diverse student body, the Court held, and the admissions process could thus give added weight to applications from minority students.

Although quotas were gone, affirmative action was not. In the years after *Bakke,* the Court upheld affirmative action in a variety of areas, including private and government employment and the distribution of broadcast licenses. In the 1980 case of *Fullilove* v. *Klutznick,* the Court also approved a federal law requiring the government to assign 10 percent of certain contracts to minority-owned firms. Such "set-aside" programs, the Court held, could be justified under Congress's power to enforce the Fourteenth Amendment. But the Court was deeply divided in *Fullilove* and in other cases, and did not always rule in favor of affirmative action. For example, the justices rejected one program that determined who would be laid off from work on the basis of race, reasoning that such a system unfairly makes specific individuals suffer the brunt of affirmative action efforts.[41]

In the 1990s, the Supreme Court has become increasingly hostile to affirmative action. In a key 1995 decision known as *Adarand Constructors, Inc.* v. *Pena,* the Court overruled its earlier rulings and held that "all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny." Thus the government could not mandate an affirmative action program unless it could show that its actions were "narrowly tailored" to serve "compelling governmental interests." Under this standard, the Court ordered the lower courts to reexamine the constitutionality of federal set-aside programs. In the same year the Court struck down a congressional redistricting plan designed to increase the number of minority representatives in Congress, ruling that race could not be the predominant factor used in drawing congressional district lines.[42]

The Supreme Court has not been alone in restricting or repealing affirmative action programs. In 1996, for example, a federal appeals court banned racial admissions preferences at the University of Texas law school. Later the same year, California voters approved Proposition 209, which prohibits racial preferences in government hiring and public school admissions throughout the state. [43]

DEBATING THE CONSTITUTION



Affirmative Action, Pro and Con

Affirmative action has become extremely controversial in recent years. Both proponents and opponents advance forceful arguments, although they often talk past, instead of to, one another.

Proponents' arguments

Affirmative action counteracts present-day discrimination and provides a form of compensation for past discrimination. Proponents of affirmative action begin from the premise that America is not, and never has been, a "color-blind" society. "Some blacks never escaped the straight line of oppression that ran from slavery through the semicentury of sharecropping to the late mid-century migration from Southern farms into isolated pockets of urban poverty," writes Roger Wilkins. "Their families have always been excluded, poor, and without skills, so they were utterly defenseless" against recent economic and social problems. Furthermore, blacks and women have traditionally been excluded from the old-boy network that provides contacts and often jobs.

Despite the efforts of the past forty years, moreover, discrimination against minorities has not gone away. In 1991, for example, ABC's *Prime Time Live* followed two young men who were identical in every respect except one: race. The result? "In a series of encounters with shoe salesmen, record-store employees, rental agents, landlords, employment agencies, taxicab drivers, and ordinary citizens, the black member of the pair was either ignored or given a special and suspicious attention." Similarly, research suggests that a black male college graduate's share of his white male counterpart's salary dropped from 82 percent in 1979 to 72 percent in 1989.

Forcing minorities to compete on a level playing field would only continue the existing patterns of discrimination. "The playing field is already tilted in favor of those by whom and for whom it was constructed in the first place," argues Stanley Fish. For example, statistical studies have shown that educational achievement is heavily influenced not only by native ability and merit but also by the educational and socioeconomic status of parents and classmates.

Evaluation of an individual's qualifications should be based on a range of criteria, including race or gender. Advocates of affirmative action argue that no one is, or should be, required to admit, hire, or promote someone who is unqualified. However, they question whether standard measures of qualifications are suitable or sufficient. For example, one scholar points out that the correlation between SAT scores and college grades "is lower than the correlation between height and weight." In many circumstances, moreover, a person's race is directly relevant to the work at hand. A police department might seek out female or black officers, for example, to better serve the needs of women or the black community. Schools might add women and minorities to the faculty to provide role models for women and minority students. Such an approach is desirable "not because it is desirable for a black boy or girl to find adult models only among blacks, but because our history has made them so conscious of their race that the success of whites, for now, is likely to mean little or nothing to them." Finally, advocates of affirmative action point out that factors other than merit, such as being a veteran or the child of an alumna, often play a role in admissions and hiring decisions.

Properly designed affirmative action programs can minimize unwanted side effects. Supporters of affirmative action recognize that such programs have unfortunate side effects. When women and minorities are given preference in admissions or employment policies, other people—white males—are left out. But affirmative action need not result in such stark contrasts between winners and losers, especially if it is coupled with other efforts designed to expand opportunities for everyone. Moreover, a less racist and sexist society would be a better society for everyone. "A

nation that persists in racism and sexism," Wilkins writes, "abandons its soul and its economic strength, and will remain mired in ugliness and moral squalor because so many people are excluded from the possibility of decent lives and from forming any sense of community with the rest of society."

Opponents' arguments

Affirmative action is unfair. Every individual has the right to be judged on his or her own talents, not as a member of a group or as a means of achieving artificial goals or quotas, critics of affirmative action argue. Thus discrimination by race or sex is wrong, period, no matter how noble the intentions of those who practice it. A white male denied a job simply because of sex and skin color suffers the same harm as a black woman denied a job for the same reasons. "Why me?" a white male passed over for a job might say. "I didn't own slaves; I didn't vote to keep people on the back of the bus; I didn't turn water hoses on civil rights marchers. Why, then, should I be the one who doesn't get the job or who doesn't get the scholarship or who gets bumped back to the waiting list?"

In the end, the strongest argument against affirmative action is the simplest: the idea that "work and merit, not race or religion or gender or birthright, should determine who prospers and who does not."

Affirmative action is ineffective and actually erodes minority rights. Critics of affirmative action suggest that the beneficiaries of affirmative action are never given the opportunity to earn respect for their own actions, while whatever success they do achieve is attributed to gender or skin color instead of talent. Affirmative action programs damage the self-confidence of the beneficiaries and create resentment among those left out. Forcing minorities to make it on their own is a slower, but perhaps surer, route to success. "When blacks say we have to have affirmative action," comments the economist Glenn Loury, "it's almost like saying, 'You're right, we can't compete on merit.' But I know we can compete." Moreover, critics argue that affirmative action has divided the nation, pitting whites against minorities and men against women. In the end, affirmative action may actually increase racism in society and harm those it is intended to help.

Race and gender are poor proxies for need. Whatever statistics may suggest, many of the recipients of affirmative action simply do not need help. "I'll be goddamned why the son of a wealthy black businessman should have a slot reserved for that race when the son of a white auto assembly worker is excluded," says one liberal Democrat. Moreover, conventional affirmative action programs include well-off minority groups while they leave out disadvantaged white subgroups. "Pennsylvania Germans . . . have a lower mean earnings, $10,339 per year, than the regulars on the affirmative action list," writes one critic. "Just because Hmongs earn a paltry $3,194, should affluent Chinese or Japanese reap benefits?"

Instead, many argue, affirmative action programs should be focused on those who are truly disadvantaged, regardless of race or gender. "It is possible to devise an enforceable set of objective standards for deprivation," writes Richard Kahlenberg. For example, college admissions officers could focus on parental income, education, and occupation. "Class preferences could restore the successful formula on which the early civil rights movement rested: morally unassailable underpinnings and a relatively inexpensive agenda," Kahlenberg concludes. "It's crucial to remember that Martin Luther King, Jr., called for special consideration based on class, not race."

SOURCES: Roger Wilkins, "The Case for Affirmative Action," *The Nation*, March 27, 1995, pp. 409–416; Ronald Dworkin, "Bakke's Case: Are Quotas Really Unfair?" in *A Matter of Principle* (Cambridge, Mass.: Harvard University Press, 1978), pp. 293–303; Stanley Fish, "Reverse Racism, or How the Pot Got to Call the Kettle Black," *The Atlantic Monthly*, November 1993, pp. 128–136; "Affirmative Action on the Edge," *U.S. News and World Report*, February 13, 1995, pp. 32–37; Thomas Sowell, "From Equal Opportunity to Affirmative Action," in *Civil Rights: Rhetoric or Reality?* (New York: William Morrow, 1984), pp. 37–48; Richard Kahlenberg, "Class, Not Race," *New Republic*, April 3, 1995, p. 217; Dante Ramos, "Losers," *New Republic*, October 17, 1994, pp. 24–25.

Summary

The term *civil rights* refers generally to questions of equality under law, especially with respect to race, ethnicity, and gender. Although originally applied to the rights of African Americans, the term has now been expanded to include any group disadvantaged by its minority status, and also to women, who, though technically a majority, have historically been excluded from positions of power and influence in the public and private sectors.

The Supreme Court has held that the Equal Protection Clause of the Fourteenth Amendment and the Due Process Clause of the Fifth Amendment prohibit government classifications by race, religion, and national origin unless the government can show that the classification serves a compelling governmental interest and that the classification is necessary to achieving that interest. These classifications are known as suspect classifications, and the test imposed by the Court is known as the strict scrutiny test. Classifications based on sex are held to a slightly lower standard.

The Fourteenth Amendment, ratified in 1868, was originally intended to redress the legacy of slavery and discrimination against African Americans. Early on, the Supreme Court limited the scope of the amendment, however, ruling first that it did not reach private conduct and then that it permitted segregation under the separate-but-equal standard. With the acquiescence of all three branches of the federal government, the southern states were able to impose a system of segregation and discrimination that left African Americans little better off than under slavery.

The federal government began to take an interest in the plight of African Americans during the New Deal, but real progress did not begin until 1954, when the Supreme Court outlawed segregation in the landmark case of *Brown* v. *Board of Education*. In the 1960s the civil rights movement, under the direction of the Reverend Martin Luther King, Jr., and others, spurred the executive and legislative branches to action. The result was key legislation, including the Civil Rights Act of 1964 and the Voting Rights Act of 1965, designed to protect the civil rights of racial minorities. The combination of judicial, executive, and legislative action greatly improved the legal status of African Americans and other racial minorities, but the legacy of slavery remains strong and persistent.

The civil rights movement has served as a model for other disadvantaged groups. Women, Native Americans, Latinos, Asians, gays and lesbians, and other minorities have used similar legal and political strategies to improve their lot. Some groups—for example, women—have fared well. Others—especially gays and lesbians—have been less successful.

In recent years the debate over civil rights has turned from equal opportunity to affirmative action. Minority groups argue that equal treatment is ineffective in redressing years of discrimination; instead the government and the private sector must take affirmative steps to help minorities compete. In the 1970s and 1980s, the Supreme Court upheld the constitutionality of a variety of types of affirmative action programs; in the 1990s, it has taken a more restrictive approach. Affirmative action remains controversial, and the exact dimensions of what is constitutionally and politically acceptable are currently in flux.

Key Terms

Civil rights
Suspect classifications
Strict scrutiny
Northwest Ordinance
Compromise of 1820
Fugitive Slave Act
Dred Scott v. *Sandford*
Emancipation Proclamation
Reconstruction
Thirteenth Amendment
Fourteenth Amendment
Fifteenth Amendment
Jim Crow laws
Plessy v. *Ferguson*
Thurgood Marshall
Brown v. *Board of Education*
Martin Luther King, Jr.
Civil Rights Act of 1964
Voting Rights Act of 1965
Busing
Integration
Desegregation
Equal Rights Amendment
Affirmative action

Review Questions

1. What is the meaning of the terms *suspect classification* and *strict scrutiny*? What classifications are considered suspect? Semisuspect? Why?
2. What was decided in the *Dred Scott* case? How did *Dred Scott* contribute to the growing crisis over slavery and help lead the country into civil war?
3. What were the goals of the Thirteenth, Fourteenth, and Fifteenth Amendments? Were those goals achieved between 1868 and 1950? Why or why not?
4. What was the ruling, rationale, and impact of the Supreme Court's decision in *Brown* v. *Board of Education*?

5. What is the significance of the Civil Rights Act of 1964 and the Voting Rights Act of 1965?
6. How did other minority groups, including women, model their legal and political strategies after the civil rights movement? Which groups were successful? Which were not? Why?
7. What is meant by affirmative action? Why do its supporters say that affirmative action is necessary? Why do its critics argue that affirmative action is undesirable?

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Internet Resources

The National Association for the Advancement of Colored People, the nation's oldest civil rights organization, at:

http://www.naacp.org

The Center for Individual Rights, which has successfully brought litigation challenging a variety of affirmative action programs; also active in First Amendment cases at:

http://www.wdn.com/cir

The Martin Luther King Directory, containing secondary documents written about Martin Luther King, Jr., as well as primary documents written during King's life at:

http://www-leland.stanford.edu/group/King/#MartinLutherKing,Jr.

The National Organization for Women, leading feminist group at:

http://www.now.org

Searchable database of Supreme Court decisions and other legal and legislative information at:

http://www.findlaw.com/casecode/supreme.html

Index

ABC (TV network), 238, 240
Aberbach, Joel D., Ch. 1, n. 27; Ch. 12, nn. 31, 35
Abolitionists, 115
Abortions, 123, 133, Ch. 4, n. 63
  debate over, 19 (illus.)
  party platforms on, 160
  protests against, 145, 231
  Supreme Court rulings on, 109–110
Abraham, Henry J., Ch. 13, n. 12
Abramson, Paul R., Ch. 7, nn. 21, 33–34
Accommodationist interpretation, 100
Acheson, Dean, 295
Ackerman, Bruce, Ch. 2, nn. 14, 17, 27
Acquired immune deficiency syndrome, *see* AIDS
Activism, *see* Political participation
Actual malice standard, 97
ACT UP (AIDS advocacy group), 231
Adams, Carolyn Teich, Ch. 14, n. 44
Adams, John, 292
  on caucus process, 180
  on political parties, 153
  as president, 287, 378, 394
Adams, Sherman, 309
Adarand Constructors, Inc. v. *Peña*, 123
Adult socialization, 133
Advertising
  in campaigns, 178, 187, 194–195
  media and, 243
AFDC, *see* Aid to Families with Dependent Children
Affirmative action, 122–124, 160
Afghanistan, Soviet invasion of, 432
AFL-CIO, 213, 218, 219, 226, 227
African Americans, 28, 124, 156
  in bureaucracy, 323
  in Congress, 259–260
  opinions of, 141
  party affiliation of, 166
  political participation of, 144, 148, 184
  on Supreme Court, 370, 371
  voting rights of, 115, 146, 148, 196, 197
  see also Racism; Slaves and slavery
Age, and voting, 146, 197, 198
Agel, Jerome, Ch. 2, n. 32
Agencies, 321
  cabinet departments, 305–306, 323, 328–330
  competition among, 345
  Executive Office of the President, 306–308, 316, 327–328, 329 (tab.)
  government corporations, 332–333
  independent, 329 (tab.), 330–331
  intelligence-gathering, 441–442
  loan guarantees to, 327
  ombudsman for, 351
  political alliances of, 340
  presidential control and, 343–344
  regulatory commissions, 331–332, 407
  see also Bureaucracy
Agency for International Development (USAID), 442
Agenda setting, 246–247, 389
Agriculture
  Department of, 335, 346, 347, 417
  interest groups for, 214
Ahern, David, Ch. 5, n. 12
Aid, *see* Federal aid; Grant-in-aid programs
AIDS, policymaking for, 231, 389, 390
Aid to Families with Dependent Children (AFDC), 411, 413
Aircraft manufacturers, 326
Airlines, regulation of, 343, 347, 417
Air pollution, policymaking and, 389, 391
Airport, Denver International, 73 (illus.)
Alabama, 44
Albright, Madeleine K., 147, 438, 439 (illus.), Ch. 15, n. 22
Alcoholic beverages, amendments about, 45, 47 (tab.), 48
Aldrich, John H., Ch. 7, nn. 21, 33–34
Alexander, Herbert, 187
All Quiet on the Western Front (film), 433
Almond, Gabriel A., Ch. 15, n. 40
Ambrose, Stephen E., Ch. 15, n. 9
Amendments, Constitutional
  1st, 42, 43 (tab.), 92, 186
  2nd, 42, 43 (tab.), 92
  3rd, 42, 43 (tab.)
  4th, 42, 43 (tab.), 106–107
  5th, 42, 43 (tab.), 49, 91, 92, 103–104
  6th, 42, 43 (tab.), 104
  7th, 42, 43 (tab.)
  8th, 42, 43 (tab.), 107–109
  9th, 43 (tab.)
  10th, 41, 43 (tab.)
  11th, 46–47
  12th, 38, 46, 47 (tab.)
  13th, 47, 111–112
  14th, 47, 49, 91, 103–106
  15th, 46, 112, 115, 116, 196
  16th, 47
  17th, 46, 47 (tab.), 270
  18th, 45, 47 (tab.), 48
  19th, 46, 47 (tab.), 116, 196–197, 260
  20th, 46, 47 (tab.)
  21st, 45, 47 (tab.), 48
  22nd, 46, 47 (tab.)
  23rd, 46, 47 (tab.)
  24th, 46, 47 (tab.), 197
  25th, 46, 47 (tab.), 309
  26th, 46, 47 (tab.), 197, 381
  27th, 46, 47 (tab.)
  balanced-budget, 45, 127, 160, 402
  Equal Rights, 46
  for flag protection, 94
  process for, 44–48
  state applications of, 44
  see also Bill of Rights; Equal protection clause, 14th Amendment; Freedoms, First Amendment
Amendments, legislative, 279, 344, 390, 391
American Association of Retired Persons (AARP), 222
American Bankers Association, 214
American Cancer Society, 215
American Conservative Union, 226
American Dental Political Action Committee, 217
American Federation of Teachers Committee on Political Education, 217
American flag, *see* Flag
American Independent party, 168
American Institute of Certified Public Accountants, 217
American-Israel Public Affairs Committee (AIPAC), 445–446

American "Know-Nothings" party, 168
American Legion, 90
American Medical Association, 220
America Online (AOL), 241
American Petroleum Institute, 220
American public, *see* Public opinion
American Revolution, 28, 30, 33–34
Americans for Democratic Action, 226
American Society for Public Administration, 84
Americans with Disabilities Act (1991), 74
Amicus curiae briefs, 376
Amnesty International, 216
Anderson, James E., Ch. 14, n. 9
Andrade, Juan, Ch. 5, n. 36
Ansolabehere, Stephen, Ch. 9, nn. 5, 8, 22; Ch. 15, nn. 35–36
Anthony, Susan B., 115, 196
Antifederalists, 359, 361
Antigovernment groups, 339
Antitrust laws, 407–408
Apocalypse Now (film), 433
Appeal process, 364
Appellate courts, 359, 362, 368, 371–372
Apple, R. W., Jr., Ch. 15, n. 15
Appointments
  presidential, 292, 296, 368, 372
  Senate approval of, 53, 54, 292, 323, 370
  see also Court appointments
Apter, David E., Ch. 1, n. 25
Arab-Americans, 446
  see also Middle East; Oil embargo
Arbitrariness, bureaucratic, 319–320, 334, 338, 348
Aristotle, 15
Arizona, 101
Arms Control and Disarmament Agency, 442
Arms sales, 328, 445–446
Armstrong, Scott, Ch. 13, n. 16; Ch. 14, n. 16
Army Corps of Engineers, 327
Arnold, R. Douglas, Ch. 12, nn. 21, 24
Articles, of Constitution, *see* Constitution of the U.S.
Articles of Confederation, 27–28, 35, 36 (tab.), 37
Ash, Roy, 352
Asian Americans
  in bureaucracy, 323
  political participation of, 149
  see also Minorities
Assassinations, and conspiracy theories, 3, 5
Association of Trial Lawyers of America, 214
Associations, as interest groups, 213
Astin, Alexander W., Ch. 5, n. 29
"Astroturfing," 228
Attentive publics, 445
  see also Public opinion
Authority
  of Congress, 41, 264
  within government, 15, 35–37, 63
  vesting of, 18–19
  see also Power(s)
Automated Traffic Surveillance and Control (ATSAC), 350
Axelrod, David, 194

Babin, Rex, 230
Bad tendency test, 94
Bagehot, Walter, Ch. 2, n. 15
Bakke, Alan, 122
Balanced-budget amendment, 45, 127, 160, 402
Balance of power strategy, 431–432
Balance of trade, 403, 426
Ball, Howard, Ch. 13, n. 4
Bank of the United States, 39, 41, 224
Banks, FDIC and, 333
Barbour, Justice, Ch. 3, n. 10
Barlow, John Perry, 241
Barnard, Douglas, Jr., 344
Barnette, Walter, 96
Barron v. *Baltimore*, 91
Base Realignment and Closure (BRAC), 454–455
Bass Anglers' Sportsman Society, 214
Bay of Pigs invasion, 450
Bearded presidents, 289
Beatty, Warren, 5, 206
Beck, Paul Allen, Ch. 6, nn. 7, 21–22
Beer, Samuel H., Ch. 14, n. 43
Behr, Roy, Ch. 9, nn. 5, 8, 22; Ch. 15, nn. 35–36
Belarus, 438
Bentsen, Lloyd, 205
Berelson, Bernard, Ch. 9, n. 16
Berger, Raoul, Ch. 13, n. 21
Berger, Samuel, 440
Bergerson, Frederic A., Ch. 12, n. 44
Berkman, Ronald, Ch. 9, nn. 2, 4
Berlin Wall
  construction of, 429
  fall of, 424
Berns, Walter, Ch. 2, n. 23
Bernstein, Richard B., Ch. 2, n. 32
Berry, Jeffrey M., 226, Ch. 8, nn. 4, 7, 11, 16, 24–25, 29
Bibby, John F., Ch. 6, n. 29
Bicameral legislature, 37–38, 269–270
Bill of attainder, 42
Bill of Rights (Britain), 31–32
Bill of Rights (U.S.), 42, 43 (tab.), 49
  right to privacy and, 109
  selective incorporation of, 92
  states and, 91–92
  see also Amendments; Constitution of the U.S.
Bills, becoming law, 276–280
Birnbaum, Jeffrey H., Ch. 14, n. 14
Birth of a Nation (film), 86
Black, Gordon, Ch. 7, n. 7
Black, Hugo, 91, 93, 97, 101
Blacks, *see* African Americans; Racism; Slaves and slavery
Blanket primary, 181
Blinder, Alan S., Ch. 14, n. 21
Blitzer, Wolf, 143
Block grants, 72, 73, 411
Bloody Monday (1987), 426
Boller, Paul F., Jr., Ch. 10 n. 24; Ch. 11, n. 6
Bollwage, Christian, 61, 62
Bork, Robert, 369
Born on the Fourth of July (film), 433
Boston Tea Party, 34
Bourgin, Frank, Ch. 1, n. 24; Ch. 14, n. 18
Bowen, Anne Drinker, Ch. 2, n. 9
Bowers v. *Hardwick*, 123
Bowman, Ann O'M., 171, 190, 264, 405, Ch. 3, nn. 30–31, 72
Bowman, Karlyn, Ch. 1, n. 1
Boy Scouts of America v. *Dale*, 120
Brace, Paul, Ch. 11, n. 41
Bradford, M.E., Ch. 2, n. 10
Brady, Henry R., Ch. 5, n. 42
Branch Davidians, 2
Brandeis, Louis, 109
Brennan, William J., 94, 95, 99, 254, 377
Breyer, Stephen G., 370 (tab.), 375 (illus.), Ch. 4, n. 63
Brezhnev, Leonid, 431 (illus.)
Bridenbaugh, Carl, Ch. 14, n. 18
Briefs, legal, 375
Bright, Steven B., 366
Brinkley, David, 258
Britain, 163, 428
  American revolution and, 33–34
  constitutional heritage from, 30–32
Broadcast media, 237–238
  see also Media; Radio; Television
Broder, David S., 228, Ch. 8, nn. 30–31
Brody, Richard A., Ch. 7, n. 33

Broken promises myth, of campaigns, 179
Brooks, Preston, 65, 66 (illus.)
Brown, Eugene, Ch. 15, nn. 19, 21
Brown v. *Board of Education of Topeka* (1954), 113, 228, 380, 382, 388
Brown v. *Board of Education II* (1955), 113, 114, 377
Bruchey, Stuart, Ch. 1, n. 24; Ch. 14, n. 18
Bryan, William Jennings, 179
Brzezinski, Zbigniew, Ch. 1, n. 26
Buchanan, Patrick, 168, 171, 447
Buckley v. *Valeo*, 186
Budget, federal, 336
  amendment to balance, 45, 127, 160, 402
  Congress and, 265–266
  deficit in, 399, 400, 402
  increase, 401 (tab.)
  surplus, 399
Budget and Accounting Act (1921), 300
Budget and Impoundment Control Act (1974), 265, 304
Budget Enforcement Act (1990), 266
Bull Moose Progressives, 168
Bulworth (film), 206
Bundy, McGeorge, 308
Bureaucracy, 318–354
  arbitrariness myth of, 319–320, 334, 338, 348
  and Congress, 337, 344–345
  and courts, 345
  defined, 321
  dependence on, 386
  discretion of, 342
  expertise of, 341–342
  external support of, 339–340
  and federal system, 78–79
  foreign policy role of, 441–442
  growth of, 334–338
  Hollywood image of, 322
  issue networks for, 340–341
  limits to power of, 343–346
  merit system for, 324, 342
  pathologies of, 347–349
  and policy subgovernments, 340–341
  political appointments to, 323–324
  power of, 338–339
  and presidency, 327–331, 343–344
  public support of, 320, 337, 338
  reform of, 349, 351–353
  role of, 325–327
  salaries of, 325 (tab.)
  skill and leadership in, 342–343
  see also Agencies
Bureau of Alcohol, Tobacco, and Firearms (BATF), 339
Bureau of Land Management (BLM), 330
Bureau of Reclamation, 327
Burford, Ann Gorsuch, 341
Burger, Warren, 99, 101, 102, 377
Burnham, Walter Dean, Ch. 6, nn. 14, 20, 31
Bush, George, 94, 309, 328
  1992 campaign of, 201, 248
  China and, 449
  Democratic Congress and, 291
  end of Cold War and, 424, 435
  federal spending under, 74, 336, 402
  foreign policy strategy of, 436–437
  military budget under, 347, 452
  NAFTA and, 405
  Persian Gulf war and, 11, 250, 299
  on press leaks, 252–253
  public opinion of, 314, 447
  Russia and, 296
  Supreme Court nominations by, 370, 382
Bush, George W.
  policy proposals of, 205–206, 301 (illus.), 403, 414, 455
  2000 presidential election of, A-23, 45, 61, 139, 149, 186, 194, 200, 201, 202, 203, 205, 291
Business, 346
  corporate welfare, Ch.14, n. 39
  government payments to, 393–394
  government regulation of, 407–408
  interest groups for, 213
  state incentives to, 404–405
  see also Industry; Private sector
Business Roundtable, 213

Cabinet, 147, 148, 149, 305–306, 323, 328–330
Cable News Network (CNN), 240, 250
Cable television, 100, 195, 213, 240
Caiden, Gerald E., Ch. 12, n. 42
Calder, Kent E., Ch. 15, n. 4
California, 44, 80, 121, 190, 221
Calleo, David, Ch. 14, nn. 23–24
Campaign and Elections (magazine), 228
Campaigns, 177–196
  advertising in, 178, 187, 194–195, 227
  broken promises of, 179, 199, 205–207
  candidate-centered, 174, 195
  Congressional, 179, 205–206
  consultants, 194, 196
  finance investigations and reform, 185–187, 189, 191, 268
  financing of, 179, 183, 185–191, 190, 193, 211, 224–227
  and interest groups, 173, 221
  media role in, 132, 194–195, 247, 248–250
  modern technology in, 193–194
  nomination process for, 180–184
  organization of, 191–194
  participation in, 145
  and political parties, 174, 188–189, 195–196
  and public policy, 205–207
  television coverage of, 132, 194–195
  use of polls in, 192–193, 249
  websites in, 193 (illus.)
  see also Candidates; Elections
Campbell, Bruce, Ch. 7, nn. 27–28
Campbell, Colin, Ch. 12, n. 31
Campbell, Joseph, Ch. 1, n. 8
Campbell, Karlyn Kohrs, Ch. 9, nn. 7, 11
Canada, 437
Candidate-centered campaigns, 174, 195
Candidates
  campaign finance and, 185–188
  campaign organization of, 191–192
  equal time rule for, 242
  incumbency of, 189, 192, 201, 221, 260–262, 282
  media and, 247–249
  organization for, 191–192
  primaries and, 181–183
  public opinion and, 179
  televised debates of, 238
  third-party, 168–170
  use of polls by, 134, 192–193
  see also Campaigns; Elections
Cannon, Joseph "Uncle Joe," 270–271
Cantrill, Albert H., Ch. 5, n. 16
Capital punishment, 108
  see also Death penalty
Cardozo, Benjamin, 92
Career service personnel systems, 324
Caribbean nations, 427
Carr, Caleb, 425, Ch. 15, nn. 1, 6–7, 51
Carroll, James D., Ch. 2 n. 37; Ch. 12, n. 37
Carswell, G. Harrold, 369
Carter, Jimmy, 77, 166, 286, 408, 417
  bureaucratic reforms of, 344, 352
  cabinet meetings of, 305
  and Congress, 312–313
  court appointments by, 372
  and Iranian hostage crisis, 434, 448
  leadership style of, 290
  organizational style of, 309
  and public opinion, 446
  treatymaking by, 295, 432

and vice-president's role, 310
Cartoons, political, 6, 162–163, 230
Castro, Fidel, 448
Categorical grants-in-aid, 68, 409
Catholics, 4, 103, 141, 184
Caucus, 180–181, 190, 275
CBS (TV network), 238
Centers for Disease Control and Prevention, 341, 390
Central America, 427, 436, 441, 447, 449
see also Latin America; and specific countries
Central Artery/Tunnel project (Boston, MA), 81 (illus.)
Central Intelligence Agency (CIA), 307, 341–342, 441, 450
conspiracy theories and, 2–3, 4
Chace, James, 425, Ch. 15, nn. 1, 6–7, 51
Chambers, Clarke A., Ch. 14, n. 37
Chao, Elaine, 149
Charleton, James H., Ch. 2, nn. 7–11
Charter(s), in Constitutional heritage, 30–31
Checks and balances, 54–57
Cheney, Richard, 293, 347, 444
Cherry tree myth, 8–9, 10 (illus.)
Children
aid to poor, 411–412, 414
health care for, 350–351
of immigrants, 160
protection of, 99–100, 220
school prayer and, 101
Children's Defense Fund, 220
Child Welfare League of America, 214–215
Chile, 450
China, 296, 431, 432, 435
Cold War policy toward, 450
diplomatic relations with, 448, 449
Choate, Pat, Ch. 1 n. 11; Ch. 15, n. 38
Christopher, Charisse, 108
Chubb, John E., Ch. 12, n. 46
Chute, Marchette, Ch. 7, n. 27
CIA, *see* Central Intelligence Agency
Cigler, Allan J., Ch. 8, nn. 4, 10
Circuit courts, 359, 362
see also Appellate courts
Cities, federal funding for, 68–69, 77, 215
Citizen activist groups, 214–215, 346
Citizen participation, 84–85, 128
see also Political participation
Citizenship status, 121–122
City council districts, 170
City of Boerne v. *Flores*, 103
Civil actions, 357–358
Civil Aeronautics Board, 343, 347, 408, 417
Civil disobedience, 144, 231
see also Protests
Civil liberties, 90
Civil rights, 112, 114, 359, 370
Civil Rights Act of 1875, 112, 114
Civil Rights Act of 1957, 278, 279, 388
Civil Rights Act of 1964, 114
Civil rights movement, 146, 166, 229
Civil Service Reform Act (1978), 324
Civil War, 65, 297
Claiborne, Harry E., 372
Clark, Tom C., 382
Clausewitz, Karl von, 433
Claymer, Adam, Ch. 5, n. 47
Clayton Antitrust Act of 1914, 407
Clean Air Act Amendments (1970), 344, 391
Clear and Present Danger (film), 322
Clear and present danger test, 94
Cleveland, Grover, 205
Clientelism, 347
Cliffhangers (film), 322
Clinton, William, 14, 83, 103, 121, 235, 268
appointments by, 147, 148–149, 292, 323, 370 (tab.)
and budget, 336, 402, 403
cabinet of, 305
campaign promises of, 205–206
and devolution, 75
economic security concerns of, 440–441
and EOP agencies, 328
and executive privilege, 294
foreign policy of, 437–438
and FTC, 417
and Haiti invasion, 299, 444
health care proposals of, 83, 386–387
impeachment of, 56, 199, 200, 286, 291
and intelligence community, 442
and military, 452, 453, 457
and NAFTA, 296, 405
and new media, 248–249, 252
and NPR, 352
public support of, 447–448
reelection of, 201
use of line-item veto by, 302
and welfare reform, 78, 390, 410, 411 (illus.)
Clinton v. *New York*, 302
Closed primary, 181
Cloture, 279
Clowns of America, 214
CNN (Cable News Network), 240, 250
Coalition building, 227
Coalition of Independent College and University Students, 212
Coalitions
bureaucratic, 340
electoral, 159
Coast Guard, 324
Cohen, William, 453
Cold War, 298
bipolar perception of, 428–429
end of, 424–425, 435, 439, 452
intelligence gathering in, 442
military spending in, 450, 451
College students, *see* Students
Colonial government, 393–394
Colonial heritage, 32
Colorado, 119–120
Coming Home (film), 433
Commerce, 38 (tab.); *see also* Trade
Commerce Department, 442
Commission on Economy and Efficiency, 352
Committee on Administrative Management, 352
Committee on Department Methods, 352
Committee system, Congressional, 267, 271–274, 278, 279, 344
Commodity Credit Corporation, 333
Common Cause, 214, 346
Common law, 31, 357
Common Sense (Paine), 33
Communication Satellite Corporation (COMSAT), 332
Communications Decency Act of 1996, 99
Community development grants, 69
Computers, 51, 193; *see also* Internet
Concord Coalition, 416
Concurrent jurisdiction, 366
Concurrent powers, 39
Concurring opinions, Supreme Court, 377
Coneheads (film), 322
Confederate States of America, 27
Confederation, 36
Conference committees, 272, 279–280
Conference work, Supreme Court, 376–377
Confirmation, 54
Congress, 257–284
Articles of Confederation and, 27
authority of, 41, 264
bicameral nature of, 37–38, 269–270
block grants and, 72, 73
budget and, 265–266, 306, 402

bureaucracy and, 337, 344–345
Bush and, 291
and campaign funding, 185, 187–189, 191
and campaign promises, 205–206
casework by, 267
changing operation of, 26
checks and balances, 54–57
committee system of, 267, 271–274, 278, 344
and COMSAT, 332
constituents' influence on, 280–282
Constitution and, 45, 46, 264
courts and, 359, 366
decentralization of, 276
decision making model for, 392
and discrimination issues, 121, 122
economic policy and, 394–395
elections for, 189, 192, 202–203, 260–262, 264
executive agreements and, 295–296
and flag protection law, 94
freedom of religion and, 103
government programs and, 327
impeachment power of, 55–56, 57, 372, 374
incumbents in, 189, 192, 260–262
and ineffectiveness myth, 22, 258, 280
and interest groups, 211–212, 224, 225–226, 228
lawmaking procedure in, 276–280
leadership of, 270–271, 274
mass transit funding and, 85
media coverage of, 253–254
membership criteria for, 258–260
military base closings and, 454
minorities in, 259–260
New Deal programs and, 335
nonofficial groups in, 274–275
oversight by, 267–269
party control of, 163–164
policymaking by, 258, 388
and pork-barrel legislation, 54, 262
powers of, 39, 41, 288–289
president and, 287–289, 293, 299, 301–302, 310, 312–313, 315
Republican control of, 26, 166, 260–261, 272, 276, 291, 402
role in defense and foreign policy, 440, 442–444
Roosevelt and, 290
staff of, 275–276
Supreme Court and, 57, 362, 363, 381
taxing power of, 264–265
term limits for, 262, 263–264
voting in, 280–282
war powers and, 296–299
welfare reform and, 390
women in, 147, 260
women's rights and, 196
107th, 147, 166, 260, 272–273 (tab.), 274
see also House of Representatives; Intergovernmental relations; Senate
Congressional authorization, 54
Congressional Budget Office (CBO), 265, 276
Congressional Research Service, 275
Congressional Union, 116
Conrad, Roan, 235, Ch. 9, n. 1
Conservative Democratic Forum, 274–275
Conservativism, 21
Conspiracy theories, 2–4, 5–6, 339
Constituency, Congress and, 280–282
Constitution of the U.S.
Articles of Confederation and, 27–28, 36 (tab.)
checks and balances, 54–57
Congress and, 45, 46, 264
court apointments and, 368
courts' power and, 345
enduring principles of, 49, 51–57
framers of, 28–30
governmental power limit and, 42–43
historical roots of, 30–34
intellectual roots of, 32–33
and national supremacy, 57
presidential powers and, 294, 296, 299–300, 334
republicanism and, 52
and separation of powers, 53
stability of, 25
Supreme Court and, 362–363, 378–380
in television age, 50–51
timeless and perfect myth of, 26–27, 58
see also Amendments, Constitutional; Bill of Rights (U.S.)
Consumer protection legislation, 417, 420
Containment, of Soviet Union, 429–430
Continental Airlines, 61–62
Continental Congress, 34
Contract with America, 75
Conway, M. Margaret, Ch. 5, nn. 10, 12, 61; Ch. 6, nn. 5, 13, 28, 33; Ch. 7, n. 24
Cooke, Jacob E., Ch. 2, nn. 1, 29, 34, 42
Cooper, Joseph, Ch. 10, n. 22
Cooperative federalism, 67–68
Corporate welfare, Ch. 14, n. 39
Corporation for Public Broadcasting (CPB), 161, 333
Corruption, 79
in congressional politics, 281
interest groups and, 223, 224
Corwin, Edward S., 442, Ch. 11, nn. 5, 21; Ch. 15, nn. 24, 27
Corzine, Jon, 179
Council of Economic Advisors (CEA), 307, 328
Council on Foreign Relations, 445
Council on Wage and Price Stability, 328
Councils of governments, 72, 84
Counsel, right to, 104–106
Court appointments
appellate, 368
district courts, 367–368
minorities, 148, 149, 229, 371–372
Senate approval of, 53, 370
state, 373
Supreme Court, 229, 368–371
women, 147, 371, 372
Courts
appellate, 359, 362, 368, 371–372
bureaucracy and, 345
circuit, 359, 362
district, 361–362, 366, 367–368
interest group litigation in, 228–229
judicial review, 56–57
limited jurisdiction, 364, 366
myth of nonpolitical, 356, 372, 383
power of, 42
recruitment for, 366–372
sex discrimination and, 118–119
state, 123, 358, 364, 366, 373, 380
system organization, 360 (tab.), 363 (tab.)
trial, 358, 364–366
see also Supreme Court
Cover, Albert D., 260, Ch. 10, n. 3
Cozy triangle coalitions, 340
Crenson, Matthew A., Ch. 12, n. 9; Ch. 14, n. 11
Crime
cruel and unusual punishment for, 42, 107–109
and right to counsel, 103–106
and searches and seizures, 106–107
Criminal justice, popular myths of, 365–366
Criminal law, 42, 358, 365
Cronin, Thomas E., 305, Ch. 11, nn. 1, 28

Crotty, William, Ch. 6, nn. 6, 30–31; Ch. 7, n. 13
Cruel and unusual punishment, 42, 107–109
see also Death penalty
Cruise, Tom, 433
Cuba, 429, 441, 448, 450
Cuban Americans, 141
Cuban missile crisis, 429
Cunliffe, Marcus, Ch. 11, n. 8
Cusimano, Maryann K., Ch. 15, n. 21
Cynicism, and politics, 136, 143, 199

D, Chuck, 98
Dalton, Russell J., Ch. 6, n. 21
Daschle, Thomas, 282
Davidson, Roger H., Ch. 10, n. 29
Davis, Jefferson, 27
Davis, S. Rufus, Ch. 3, n. 7
Death penalty, 92, 104, 108–109, 380
Debt
national, 266, 399–402, 410, 426
Revolutionary War, 28
Decentralization, political party, 155, 170, 172
Decisionmaking, 16
models, for policy, 392–393
Declaration of Independence, 34
Deer Hunter, The (film), 433
Deering, Christopher J., Ch. 10, n. 25
Defense Department, 326, 344, 346, 441
budget of, 345
leadership of, 342
media management by, 445
see also Military strategies
Defense of Marriage Act (1996), 121
Defense policy, *see* Foreign and defense policy
Defense Reform Initiative, 455
Deficit, budget, 399, 400, 402
Deficit, trade, 403
Delegated powers, 39
DeLuca, Donald R., Ch. 15, n. 43
Democracy
concept of, 15
ideological competition in, 19–20
interest groups and, 231
representative, 16
Democratic party, 87, 159, 227
background of, 161
and campaign funding, 189
committee power in Congress, 272–273
1994 election defeat of, 447
majority leader of, 271
nominating conventions of, 183–184
2000 platform of, 160–161 (tab.)
realignment of, 166
and Republicans compared, 156–158
see also Political parties
Democratic Study Group (DSG), 274
Demographics, and voter turnout, 198
Dempsey, Glenn R., Ch. 9, n. 18
Denver International Airport, 73 (illus.)
Department of Agriculture, 335, 346, 417
Department of Defense, *see* Defense Department; Military
Department of Education, 7, 71, 326
Department of Health, Education and Welfare, 381
Department of Health and Human Services, 330
Department of Justice, 368, 382, 408
Department of Transportation, 326
Department of Veterans Affairs, 324
DePriest, Oscar, 260
Desegregation, of schools, 113–114, 380, 382
Destler, I. M., Ch. 14, n. 28; Ch. 15, n. 17
Détente policy, 431, 432
Deterrence strategy, 456
Devolution, 75, 79, 264
Dewar, Helen, Ch. 10, n. 36
Dewey, Thomas E., 238, 300
Diamond, Martin, Ch. 2, nn. 9, 26
Dickerson v. *United States*, 105–106
Dionne, E. J., Jr., 21
Diplomatic tools, 448–450
Disabled, aid to, 412, 415
Discrimination
in employment, 118–119, 419–420
and equality myth, 90, 111
against homosexuals, 119–121
racial, 112–115, 148
reverse, 122
sex, 115–119
Disney, 241, 245
Dissenting opinions, Supreme Court, 377
District courts, 361–362, 366, 367–368
Diversity cases, 361, 366
Djerejian, Edward R., 252
Doctor-assisted suicide, 110–111
Dodd, Lawrence C., Ch. 10, nn. 22, 28
Dole, Elizabeth, 184
Dole, Robert, 382
Domestic policy, state innovation in, 79–80
see also Economic policy; Public policy; Social policy
Donahue, John D., Ch. 12, n. 45; Ch. 14, n. 43
Donald, David, Ch. 3, n. 11
Douglas, William O., 97, 109, 375–376
Doyle, Richard, Ch. 10, n. 15
Draper, Theodore, Ch. 12, n. 13; Ch. 15, n. 31
Drucker, Peter F., Ch. 14, n. 22
Drudge, Matt, 235
Dryden, Steve, Ch. 15, n. 26
Dual federalism, 66–67, 75–76, 77
Dubnick, Melvin J., Ch. 12, n. 49
Ducat, Craig R., Ch. 13, n. 20
Due process clause, 14th Amendment, 47, 49, 91
right to counsel and, 103–106
Dukakis, Michael, 205
Duncan, Dayton, Ch. 9, n. 26
Dunham, Pat, Ch. 5, n. 27

Eads, George C., Ch. 14, n. 35
Eastern Europe, 431, 434, 435–436
Eastwood, Clint, 322
Economic interest groups, 213–214, 222
Economic policy, 13, 274, 307, 393–408
Clinton and, 437–438
for development, 403, 405–407
Federal Reserve and, 395–396, 397 (tab.)
fiscal policy, 396
historical overview of, 393–395
management of, 20
monetary policy, 395–396
national debt and, 399–402
party platforms on, 160
regulation and deregulation, 407–408
and state competition for business, 404–405
and vulnerability, 425–426, 437
Economy, oil embargo and, 132
Edelman, Marian Wright, 220
Edelman, Murray, Ch. 1, nn. 10, 17
Edelsberg, Herman, 118
Education
of Congressional members, 259
Department of, 71, 326
and intergovernmental relations, 70–72, 71
party platforms on, 160
performance review for, 351
and political socialization, 131
and voting, 198
see also Schools, public
Education Amendments (1972), 71
Edwards, George, Ch. 11, nn. 30, 37
Effective Government Committee, 218

Egalitarianism, in Congress, 270
Ehrenhalt, Alan, Ch. 3, n. 41
Ehrlichman, John, 309
Eighteenth Amendment, 45, 47 (tab.), 48
Eighth Amendment, 42, 43 (tab.), 107–109
Eisenhower, Dwight D., 184, 291, 308, 430
  bureaucracy and, 352
  lobbying by, 312
  on military-industrial complex, 393
  organizational style of, 309
  segregation and, 114, 382
  Supreme Court and, 371
"Elastic clause," 41
Elderly, programs for, 414–417
Elected officials, 219
  see also Public officials
Electioneering, 206, 224–227
Elections
  of 1888, 205
  of 1896, 178 (illus.), 179
  of 1960, 179, 191, 194
  of 1972, 185
  of 1988, 249
  of 1992, 168, 201, 248, 260
  of 1994, 26, 187, 260
  of 1996, 148–149, 168, 201, 261
  of 2000, see Presidential election of 2000
  Congressional, 189, 192, 260–262, 264
  electoral college and, 53, 61–63, 203–205
  horse-race characteristics of, 134, 249–250
  independents in, 159
  internet voting in, 197 (illus.)
  of judges, 373
  local nonpartisan, 170
  money spent on, 187
  open race, 189
  participation in, 145
  and political parties, 161, 163, 373
  popular cultural myths and, 206
  presidential, 192
  primaries, 163, 181–183, 187
  state and local funding of, 190
  third parties in, 168–170, 171
  turnout for, 179
  see also Bush, George W.; Campaigns; Candidates; Gore, Albert; Presidential election of 2000; Voting
Electoral coalitions, 159
Electoral college, 45, 53, 61–63, 202, 203–205
Electoral party system, 167
Eleventh Amendment, 46–47
Elite model, of decision making, 393
Elitist view of power, 18
Elkins, Stanley, Ch. 3, n. 2
El Salvador, 436, 449
Employment Act of 1946, 300, 307, 396
Employment discrimination, 118–119, 419–420
Employment Division v. *Smith*, 102–103
Energy crisis, 432
England, poor laws of, 408
  see also Britain
Entertainment Tonight (television program), 244
Entitlement programs, 265, 266, 400, 410, 412
Environment, 437
  government role in, 13–14
  interest groups for, 341
  party platforms on, 161
  pollution of, 389, 391
Environmental Protection Agency (EPA), 322, 330, 341, 344, 346, 391
EOP, *see* Executive Office of the President
Equal employment opportunity, 419–420
Equal Pay Act (1963), 118
Equal protection clause, 14th Amendment, 47, 49, 110–124
  and affirmative action, 122–124
  and citizenship status, 121–122
  and education, 70
  and gay rights, 119–121
  and racism, 111–115
  and sex discrimination, 115–119
Equal Rights Amendment (ERA), 46
Equal-time rule, 242
Erikson, Robert S., Ch. 5, n. 14
Escobedo v. *Illinois*, 105
Eskimos, voting rights of, 115, 197
Espionage Act (1917), 93
Establishment clause, 100–101
Ethiopia, foreign aid to, 449
Ethnic groups
  and local government, 82
  public opinion of, 140–141
  and redistricting, 261
  see also Minorities
Europe, 428
  Eastern, 431, 434, 435–436
  political parties in, 20, 153–154, 167, 168
  voting in, 198
  see also specific countries
Euthanasia, 110–111
Exclusionary rule, 107
Executive agreements, 295
Executive Office of the President (EOP), 306–308, 316, 327–328, 329 (tab.)
Executive order, 306, 388, 390
Executive privilege, 294
Expansionism, 427
Ex post facto law, 42
Extremists, 339

Factions, 52, 53, 231
  see also Interest groups
Falwell, Jerry, 97
Families
  aid to poor, 411–412
  political socialization and, 131
Family Support Act (1988), 390
Farah, Barbara, Ch. 7, n.14
Farmers, 13
  as interest group, 214
  protests by, 145
  see also Agriculture
Farnsworth, Clyde H., Ch. 12, n. 36
Farrand, Max, Ch. 2, nn. 9, 11, 46
Fast-track legislation, 296
FCC, see Federal Communications Commission
FDA, see Food and Drug Administration
Federal Aviation Administration, 417
Federal Bureau of Investigation (FBI), 2, 339–340
Federal Communications Commission (FCC), 242, 407, 408
Federal Deposit Insurance Corporation (FDIC), 333
Federal Election Campaign Act (1971), 185–187, 188, 226
Federal Election Commission, 186, 191
Federal Emergency Management Agency (FEMA), 305, 330
Federal employees, 319
  see also Bureaucracy; Public officials
Federal Energy Regulatory Commission (FERC), 407
Federal funding
  for cities, 68–69, 77, 215
  for education, 72
  of election campaigns, 187, 188
  pork-barrel, 54, 262
  see also Foreign aid; Grant-in-aid programs
Federal government
  under Articles of Confederation, 27–28
  authority within, 18, 36–38, 63
  economy and, 394

powers within, 39–42
public confidence in, 64, 138
social policy and, 409
and state authority, 36–37, 264
supremacy of, 43
weakness vs. dominance of, 63
see also Bureaucracy; Intergovernmental relations
Federalism, 38 (tab.), 411
cooperative, 67–68
dual, 66–67, 75–76, 77
intergovernmental relations and, 63–64, 65
political dramas of, 61–63
state government and, 79–81
Supreme Court role in, 75–76, 77
2000 election and, 61–63
Federalist Papers (Madison et al.), 50, 52, 231, 296–297, 334
Federalist party, 359, 361, 378
Federal Radio Commission, 237
Federal Reserve System, 41, 333, 395–396, 397 (tab.)
Federal system (federation), 37
Federal Tort Claims Act (1946), 345
Federal Trade Commission (FTC), 332, 407, 417
Feigert, Frank B., Ch. 6, nn. 5, 11, 13, 28, 33; Ch. 7, n. 24; Ch. 8, n. 27
Feingold, Russ, 191
Feinstein, Diane, 187
Feminists, 115–116, 146
Fenno, Richard F., Jr., 262, 267, Ch. 10, nn. 11, 18, 26
Ferber, Mark F., Ch. 10, n. 27
Ferraro, Geraldine, 147
Ferris, Robert C., Ch. 2, nn. 7–11
Feudalism, 30
Fifteenth Amendment, 46, 112, 115, 116, 196
Fifth Amendment, 42, 43 (tab.), 49, 91, 92, 103–104
Filibuster, 279, 281
Fillmore, Millard, 288
Films, popular culture myths in, 3, 5, 86–87, 206, 245
Fine, Sidney, Ch. 14, n. 37
Fiorina, Morris, 267, Ch. 3, n. 28; Ch. 7, n. 38; Ch. 10, n.7, 17
Firefighters, Forest Service, 319, 330
Firestone, Mary Alice, 97
First Amendment, 42, 43 (tab.), 92, 186
see also Freedoms, 1st Amendment
First Concurrent Budget Resolution, 265
Fiscal policy, 396
Fisher, Louis, Ch. 11, n. 19; Ch. 12, n. 38
Fiske, John, Ch. 9, n. 14
Fitzgerald, Ernest, 346
Fitzgerald, Frances, 10
Fitzwater, Marlin, 252
Fix, Michael, Ch. 14, n. 35
Flag
protection of, 94–95
as symbol, 90, 96
Flag Protection Act of 1989, 94–95
Flanagan, Scott C., Ch. 6, n. 21
Flango, Victor E., Ch. 13, n. 2
Flemming, Gregory, Ch. 6, n. 27
Flexible response strategy, 456
Floor action, for Congressional legislation, 278–279
Florida, 61, 76, 116–117
Florida Healthy Kids, Inc. program, 350–351
Foley, Thomas S., 260
Food and Drug Administration (FDA), 407, 417
Food stamp progam, 412–413
Ford, Gerald, 290, 293, 370 (tab.)
Ford Foundation, 350
Foreign aid, 449
Foreign and defense policy, 10, 28
1800–1914, 426–427
1914–1960, 427–430
1960s–1980s, 430–432, 434–435
1990s, 425, 436–438
bureaucratic role in, 441–442
Congressional role in, 442–444
diplomatic tools for, 448–450
and economic vulnerability, 425–426, 458
and media management, 444–445
post Cold War, 439
presidential role in, 440–441
role of public opinion in, 446–448
see also Military strategies
Foreign interest groups, 216
Foreign Service, 324, 441
Forest Service, see USDA Forest Service
Formal recognition, 448
Formula grants, 68
Fortas, Abe, 53
"Founding Fathers," 28–30, 153
Fourteenth Amendment, due process clause, 47, 49, 91, 103–106
see also Equal protection clause, 14th Amendment
Fourth Amendment, 42, 43 (tab.), 106–107
Fowler, Linda L., Ch. 7, n. 7
Fox TV network, 3, 240
Fraleigh, Cynthia, Ch. 14, n. 35
Franck, Thomas, Ch. 11, n. 10
Frank, Al, Ch. 3, n. 1
Frankfurter, Felix, 375–376
Franking privilege, 262
Franklin, Benjamin, 28, 29–30, 309
Freedom of Information Act, 346
Freedoms, 1st Amendment, 93–103
of press, 96–100
of religion, 100–103
of speech, 93–96, 186
see also Amendments, Constitutional; Bill of Rights
Free exercise clause, 102–103
Freemason societies, 3
Freenet, 98
Free riders, 222
Free speech, 93–96, 186
Free trade, 403, 405, 442, 443
see also North American Free Trade Agreement
Frendeis, John, Ch. 6, nn. 17, 27
Friedman, Benjamin M., Ch. 14, n. 26
Friedman, Milton, 398
Friends, and political socialization, 131
Fritschler, A. Lee, Ch. 12, n. 25
Front-loading, of primaries, 182–183
Full faith and credit, 43
Full Metal Jacket (film), 433
Funderburk, Charles, Ch. 11, n. 11
Fund for a Democratic Majority, 218
Furman v. *Georgia*, 108, 380

Gaebler, Ted, 352, Ch. 12, n. 48
Gans, Herbert J., Ch. 9, n. 13
Garman, E.Thomas, Ch. 14, n. 50
Gates, Bill, 367 (illus.)
Gator (film), 87
Gaudet, H., Ch. 9, n. 16
Gay rights, 119–121
Gender
discrimination, 116–117
public opinion and, 139
and voter turnout, 198
General Accounting Office, 275–276, 345
General Agreement on Tariffs and Trade (GATT), 442, 443
General civil service system, 324
General jurisdiction, 366
General revenue sharing, 72
General service governments, 81
General Services Administration (GSA), 330
Genesis program, 350
George, John, Ch. 5, n. 9
Germany, 145, 146, 426
Berlin crisis in, 429

Berlin wall falls in, 424 (illus.)
reunification of, 428, 435
Gerrymandering, 261
Gerston, Larry H., Ch. 14, n. 35
Ghostbusters (film), 322
Gibbons v. *Ogden*, 65
Gideon v. *Wainwright*, 105
Gilder, George F., Ch. 9, n. 9; Ch. 14, n. 7
Gillespie, Ed, Ch. 2, n. 3; Ch. 14, n. 27
Gillespie, Michael Allen, Ch. 2, n. 30
Gilman, Nicholas, 29
Gilmour, Robert S., Ch. 12, n. 16; Ch. 15, n. 30
Gingrich, Newt, 274
Ginsburg, Ruth Bader, 117, 147, 369 (illus.), 370 (tab.), 375 (illus.)
Gitelson, Alan R., Ch. 6, nn. 5, 11, 13, 17, 26–28, 33;, Ch. 7, n. 24; Ch. 8, nn. 5, 27
Gitlow v. *New York*, 94
Glazer, Nathan, Ch. 13, n. 21; Ch. 14, n. 41
Glendon, Mary Ann, Ch. 4, n. 1
Global economy, Clinton and, 437–438
Global warming, 437
Gnutella, 98
Goesaert v. *Cleary*, 116
Goldberg, Arthur, 105
Goldman, Sheldon, Ch. 13, n. 10
Gone with the Wind (film), 86
"Good faith exception," 107
Goodsell, Charles T., Ch. 12, n. 41
Gorbachev, Mikhail S., 424, 434–435, 436, 451
Gore, Albert
2000 presidential campaign of, 45, 61, 139, 149, 186, 199, 200, 201, 202, 203
as vice-president, 310, 352
Gormley, William T., Jr., Ch. 12, n. 42
Government
authority within, 15, 35–37, 63
civic sense of, 7
confidence and trust in, 136, 138, 199
conspiracy theories, 2–4
defined, 12
environmental management by, 13–14
innovation in, 350–351
legitimacy of, 35
myths of, 8–12, 386–388, 421
political parties and, 163–164
powers within, 39–43
role in economic development, 13
unitary system of, 36–37
see also Constitution of the U.S.; Federal government; Intergovernmental relations; Local government; Myths; States
Government contracts, 326
Government corporations, 332–333
Government officials, see Public officials
Government-related interest groups, 215–216
Government-sponsored enterprises, 327
Governors, 172, 303–304
Graber, Doris A., Ch. 9, nn. 6, 12, 35
Gramm, Phil, 274
Gramm-Rudman-Hollings Act (1985), 266, 402
Grant-in-aid programs, 77, 84
bureaucracy and, 78–79
innovation in, 72–74
intergovernmental relations and, 67–69, 326
Grassroots participation, 172, 173
Grassroots pressure, 227–228
Graves, W. Brooke, Ch. 3, nn. 10, 12, 14
Great Britain, see Britain
Great Compromise, 38
Great Depression, 68, 134, 289–290, 387
fiscal policy in, 396
and isolationism, 428
and New Deal, 13, 335, 337, 395
and social policy, 409
and trade policy, 403
Great Society policies, 69, 77, 337, 413
Green Berets, The (film), 433
Greene, Jack P., Ch. 2, nn.12, 16, 24
Green party, 168, 171
Greenspan, Alan, 396, 398 (illus.), 415
Greider, William, Ch. 2, n. 28; Ch. 14, n. 19
Grenada invasion, 298–299
Griffin, Stephen M., Ch. 2, n. 33
Griffith, D.W., 86
Griswold v. *Connecticut*, 109
Grossman, Michael Baruch, Ch. 9, n. 31
Guatemala, 443
Gubernatorial appointment, 373
Gulf of Tonkin Resolution (1964), 298
Gulick, Luther H., Ch. 3, n. 34
Gun control, 161

Haider, Donald H., Ch. 3, n. 41
Haiti, invasion of, 299, 444
Haldeman, H. R. "Bob," 309
Hall, Kermit L., Ch. 2, n. 35
Halley, Alexis A., Ch. 15, n. 30
Hamilton, Alexander, 293, 334
and national supremacy, 63, 65
on presidential powers, 296–297
support for Constitution by, 48, 52
as Treasury secretary, 287, 394
Hammond, Bray, Ch. 2, n. 28
Hancock, John, 7–8, 9, 287
Hanna, Mark A., 185
Hardball (television program), 244
Harlan, John, 376
Harlow, Bryce, 312
Harris, Richard A., Ch. 14, n. 51
Harrison, Benjamin, 205
Harris v. Forklift, 119
Hart, Peter D., Ch. 1, n. 1; Ch. 5, n. 43; Ch. 12, n. 3
Hartley, W. H., Ch. 5, n. 4
Hartz, Louis, 167, Ch. 6, n. 24
Harvey, Philip L., Ch. 14, n. 38
Hastings, Alcee L., 372, 374
Hawaii, 121
Hawley-Smoot Tariff of 1929, 403
Haynsworth, Clement, 369
Health care, 129, 230
for children, 350–351
Clinton's proposals for, 83, 386–387
for elderly, 415
lobbyists for, 83–84
for poor (Medicaid), 83, 122, 413–414
public policy for, 389, 390
Healy, Patrick, 220, 222
Hearst, William Randolph, 237, 243
Heclo, Hugh, Ch. 12, n. 27; Ch. 14, n. 44
Hedges, Chris, Ch. 1, n. 6
Heidenheimer, Arnold J., Ch. 14, n. 44
Hemlock Society, 110
Hennessy, Bernard, Ch. 5, nn. 9, 38–39
Hernandez, Andrew, Ch. 5, n. 36
Hershey, Marjorie Randon, 249, Ch. 9, n. 27
Herson, Lawrence J.R., Ch. 2, n. 21
Hess, Stephen, 253, Ch. 9, nn. 25, 36; Ch. 11, n. 27
Highway Trust Fund, 85, 326
Hill, Anita, 370
Hill-Burton program, 68
Hinckley, Barbara, Ch. 10, nn. 2, 20, 23; Ch. 11, nn. 31–32, 41; Ch. 15. n. 29
Hispanics
in bureaucracy, 323
in Congress, 260
local needs of, 82

opinions of, 141
participation by, 148–149, 197
Hobbes, Thomas, 32–33
Hoefler, James M., Ch. 12, n. 25
Hofheinz, Roy, Ch. 15, n. 4
Hofstadter, Richard, 3
Hollings, Fritz, 276
Holloway, Harry, Ch. 5, n. 9
Holmes, Jack E., Ch. 15, n. 42
Holmes, Oliver Wendell, 93–94, 371
"Home style," of incumbents, 262
Homosexual rights, 119–121, 123, 161, 206
Hoopla, in campaigns, 178
Hoover, Herbert, 352, 387
Hoover, J. Edgar, 339
Hosking, Geoffrey A., Ch. 1, n. 9
"Hot Shots" firefighters, 319, 330
House of Representatives, 53, 402
and balanced budget, 45
caucuses in, 275
election campaigns of, 187
eligibility for, 258
impeachment and, 56
incumbents in, 189, 192, 203, 260–261
leadership in, 270–271
Rules Committee, 273, 279
single-issue politics in, 275
see also Congress
Housing, 68, 351
Housing Act of 1937, 68
Hoyt v. *Florida*, 116–117
Hrebenar, Ronald, 221, Ch. 8, n. 19
Hruska, Roman, 369
Huckabee, Mike, 304
Huffington, Michael, 179, 187
Hughes, Charles E., 96, 375, 378
Humanitarian crises, 438
Humphrey, Hubert, 183
Hunt, Albert R., Ch. 10, n. 1
Huntington, Samuel P., Ch. 1, n. 26; Ch.2, n.44
Hussein, King of Jordan, 250
Hussein, Saddam, 11, 452
Hyde, Henry, 56 (illus.)

Ideologies
changing perspectives on, 20–21
myth and, 19
political, 130
of political parties, 154
Immerwahr, John, Ch. 15, n. 45
Immigrants, 115, 413
rights of illegal, 119, 121–122
Immigration, party platforms on, 160
Impeachment, 55–56, 57
Clinton's, 56, 199, 200, 286, 291
of judges, 372, 374
Imperialism, bureaucratic, 349
Implied powers, 39
Impoundment, 302, 304
Income tax, 265, 391, 405
Incrementalism, 347–348
Incremental model of decision making, 392
Incumbents, 201, 221
in Congress, 189, 192, 260–262, 282
Independence Day (film), 311
Independent agencies, 329 (tab.), 330–331
Independent Federation of Flight Attendants, 214
India, 430, 438
Indonesia, 430
Industry, 213, 406
see also Business; Private sector
Inevitable discovery exception, 107
Inflation, 396
Information, interest groups and, 220
Infoseek, 241
Infrastructure projects, 400
Inherit the Wind (film), 86
Initiatives, 16, 221
Innovations in Government Program, 350–351
Inspector general, 346
Integration, *see* Desegregation, of schools
Intellectual roots, of constitution, 32–33
Intelligence-gathering agencies, 441–442
Intensity, of opinion, 129
Interest groups, 173, 210–233
citizen activist, 214–215
coalition building by, 227
Congress and, 211–212, 224, 225–226, 228
corrupting influence of, 212, 231–232
defined, 212
democracy and, 231
economic, 213–214, 222
electioneering by, 224–227
environmental, 341
factors for success of, 218–220, 222
and foreign and defense policy, 445
government-related, 215–216
grassroots pressure by, 227–228
hard-line tactics of, 231
litigation by, 228–229
policymaking and, 226–227, 230
and political parties compared, 212–213
public sector, 84
see also Lobbyists; Political action committees
Intergovernmental relations (IGR)
bureaucratic role in, 78–79
citizen role in, 84–85
Congressional role in, 74–75, 77
cooperative federalism and, 67–68
and education, 70–72, 74
federalism and, 63–64, 65
grant programs and, 67–69, 326
lobbies and, 83–84
local government role in, 81–82
myths in, 63, 87–88
presidential role in, 77–78
reforming and devolving, 69, 72–75, 77–78, 79, 264
urban focus of, 68–69, 77
welfare reform and, 78, 409
see also specific branch of government
Internal Revenue Service (IRS), 330, 343, 344–345, 391
International Brotherhood of Boilermakers, 214
International City and County Management Association, 84, 216
Internet, 193, 235, 236, 241
control of, 98
in election campaigns, 179, 248
obscenity on, 99
voting by, 197 (illus.)
Interstate commerce, 65, 114–115, 335
Interstate Commerce Act of 1887, 407
Interstate Commerce Commission (ICC), 407, 417
In the Heat of the Night (film), 86
In the Line of Fire (film), 322
Iowa caucus, 181, 190
Iran, 308
Iran-Contra affair, 272, 291, 328, Ch. 15 n. 31
Iranian hostage crisis, 434, 435 (illus.), 448
Iraq, 438, 449
war with, 11, 291, 299
see also Persian Gulf War
Irrelevance, party, 153, 158–159, 174, 175
Isolationism, 426–427, 428
Israel, 432, 438
formal recognition of, 448
lobby for, 445–446
Issue identification, 389
Issue networks, 340–341

Iyengar, Shanto, Ch. 9, nn. 5, 8, 19, 21–22; Ch. 15 nn. 35–36

Jackson, Andrew, 41, 164, 287–288, 336, 373
  and spoils system, 323
Jackson, John S. III, Ch. 7, n. 13
Jackson, Robert, 96
Jacobs, Lawrence, 142
Jacobson, Gary C., 189, Ch. 7 n. 22, Ch. 10, nn. 6, 12
Jahnige, Thomas P., Ch. 13, n. 10
Jamieson, Kathleen Hall, Ch. 9, nn. 7, 11
Janda, Kenneth, Ch. 6, n. 6
Japan, 9, 405, 426, 428
Jay, John, 52, 196
J.E.B. v. *Alabama*, 117
Jefferson, Thomas, 65, 297, 394
  Congress and, 287, 312
  on Constitutional change, 25, 58
  impounding funds by, 302
  and *Marbury* v. *Madison*, 378, 379
  patronage system of, 323
  on political parties, 153
Jews, 102, 141, 184
Jim Crow laws, 112 (illus.), 113
Job training programs, 410, 411
John, Kenneth E., Ch. 5, n. 34
John, King of England, 31
Johnson, Andrew, 56, 286, 293
Johnson, Haynes, 228, Ch. 8, n. 31
Johnson, Lyndon B., 183, 310, 352, 441
  and Congress, 310, 312
  court appointments by, 53, 229, 371
  desegregation and, 114, 382
  and grant system, 72, 77
  Great Society programs of, 69, 77–78, 337, 413
  and Vietnam War, 290, 298, 430
Joint Chiefs of Staff, 441, 457
Joint committees, 272
Jordan, Barbara, 180
Journalism, 235, 255
  broadcast, 238
  government and, 250
  sensationalist, 237
  tabloid, 243–244
  see also Media
Judeo-Christian religious traditions, 32
Judges
  impeachment of, 372, 374
  policymaking by, 388
  recruitment of, 366–372
  state selection of, 373
  see also Courts; Supreme Court; *and specific judges*
Judicial activism, 379
Judicial power, 42
Judicial restraint, 379
Judicial review, 56–57, 378
Judiciary Act of 1789, 361, 378–379
Judiciary Act of 1925, 363
Judiciary committee, Senate, 368, 370
Jury service, 117
Jury trials, 358
Justice Department, 368, 382, 408

Kammen, Michael, Ch. 2, n. 4
Kanter, Arnold, Ch. 15, n. 23
Karnow, Stanley, Ch. 15, n. 10
Katsh, Abraham I., Ch. 2, n. 22
Kaufman, Herbert, Ch. 12, n. 19
Kazakhstan, 438
Kearney, Richard C., 72, 171, 190, 264, 405, Ch. 3, nn. 30–31
Kearns, Doris, Ch. 11, n. 35
Keefe, William J., Ch. 6, n. 4; Ch. 7, nn. 17, 19; Ch. 10, n. 35
Keep, Charles H., 352
Keiser, Lael R., Ch. 14, n. 50
Keith, Bruce E., Ch. 6, n. 12
Keller, Morton, Ch. 3, nn. 4, 35
Kemp, Jack, 248
Kennan, George F., Ch. 15, n. 8
Kennedy, Anthony, 103, 120, 370 (tab.), 375 (illus.), 382
  on death penalty, 107
  on protection of children, 100
Kennedy, John F., 307 (illus.), 308, 312
  Berlin blockade and, 429
  bureaucracy and, 352
  campaign of, 191
  civil rights law and, 114, 278
  debate with Nixon, 194, 238
  media and, 251
  on myth, 10–11
  NASA and, 342, 392
  Peace Corps and, 388, 390
  and Vietnam War, 430
Kennedy, Robert, 191, 307 (illus.)
Kennedy School of Government (Harvard University), 350
Kenya, 430
Kernell, Samuel, Ch. 11, n. 39
Kerwin, Cornelius M., Ch. 12, n. 15
Kettl, Donald F., Ch. 12, n. 11; Ch. 14, n. 23
Kevorkian, Jack, 110
Key, V. O., Jr., 129, 167, Ch. 6, nn. 20, 24
Keyes, Alan, 184
Keynes, John Maynard, 396
Keynesians, 396, 398
Khrushchev, Nikita, 429
Kimel v. *Florida Board of Regents*, 76
Kinder, Donald R., Ch. 9, n. 21
King, Anthony, Ch. 7, n. 33, Ch. 12, n. 27
Kissinger, Henry, 308, 431–432, 440, Ch. 15, nn. 11–13
Kitch, Laura W., Ch. 9, nn. 2, 4
Klein, Mary, Ch. 11, n. 13
Klingberg, Frank L., Ch. 15, n. 42
Kluger, Richard, Ch. 12 n. 25; Ch. 13, n. 28
Knightley, Phillip, Ch. 9, n. 3
Koenig, Louis W., Ch. 11, nn. 2, 4
Kohlmeier, Louis M., Jr., Ch. 14, n. 34
Koppel, Ted, 248
Korean War, 297–298, 429, 430, 451
Korn, William S., Ch. 5, n. 29
Kosterlitz, Julie, Ch. 8, n. 26
Kovach, Bill, Ch. 9, n. 15
Kraft, Michael E., Ch. 12, n. 28
Kramnick, Isaac, Ch. 2, n. 22
Kristol, Irving, 58
Kriz, Margaret, Ch. 12, n. 26
Ku Klux Klan, 6, 93 (illus.), 96
Kumar, Martha Joynt, Ch. 9, n. 31
Kurdish people, 449
Kurian, George T., Ch. 12, n. 10
Kuwait, Iraqi invasion of, 11, 299, 436

Labor force, federal government, 335
Labor organizations, 213–214, 227
Ladd, Everett Carll, Ch. 5, nn. 19, 42
Lake, Anthony, 292, 440
Land grants, 67
Larry King Live, 248–249
Lasch, Christopher, Ch. 1, n. 18
Latin America, 427, 437
  see also Central America; *and specific country*
Latinos, see Hispanics
Lawson, Kay, Ch. 6, n. 6
Layzell, Anne, Ch. 6, n. 27
Lazarfeld, Paul, Ch. 9, n. 16
Leach, Richard H., Ch. 3, n. 8
League of Women Voters, 212
Lebanon, 298
Lederman, Susan S., 159, Ch. 6, nn. 15–16; Ch. 7, n. 39
Legal Defense Fund, NAACP, 113
Legislative election, 373
Legislative veto, 268–269
Legitimacy, establishing, 35
Leibowitz, Sam, 104 (illus.)
Lemon v. *Kurtzman*, 101
Leviathan (Hobbes), 33
Levinson, Sandford, Ch. 2, nn. 17, 47

Lewinsky, Monica, 235
Lewis, Neil A., Ch. 8, n. 28
Libel, 97
Liberalism, 20
Libertarianism, 21
Libertarian party, 154, 171
Liberty, myths of, 90, 100, 124
see also Freedoms, 1st Amendment
Lichter, Linda S., Ch. 5, n. 25
Lienesch, Michael, Ch. 2, n. 30
Light, Paul C., 314, Ch. 11, n. 40; Ch. 12, nn. 14, 40; Ch. 14, nn. 15, 47
Lilie, Stuart A., Ch. 1, n. 28
Limited jurisdiction courts, 364, 366
Lincoln, Abraham, 164, 305, 313, 362
as powerful president, 288–289, 297
Lindsay, John V., 84
Line-item veto, 54, 302
Line Item Veto Act (1996), 302
Lipset, Seymour Martin, Ch. 2, n. 43
Literacy tests, for voting, 115
Litigation, by interest groups, 228–229
Livingston, Robert, 286
Loan guarantees, 327
Lobbying Restrictions Act (1995), 224
Lobbyists, 340, 346
campaign finance and, 211
defined, 216
expertise of, 220
foreign policy and, 445–446
intergovernmental, 83–84
for president, 312–313
public officials and, 212, 223–224
see also Interest groups
Local governments
authority of, 17, 18
campaign financing and, 190
employees in, 335–336
environmental policy and, 391
federal grants to, 68, 69
innovation in, 350–351
interest groups for, 215–216
intergovernmental relations and, 81–82
military base closings and, 454–455
political parties in, 170–172
power of, 17, 63
public confidence in, 64, 138
role of, 81–82
state government and, 79
Local television, 239, 248
Locke, John, 33
Lockheed Martin Corporation, 326, 332
Logsdon, John M., Ch. 14, n. 17
Long, Norton E., Ch. 12, n. 22
Long Beach (California), 454–455
Longley, Charles, Ch. 6, n. 30
Loomis, Burdett A., Ch. 8, nn. 4, 10; Ch. 10, n. 28
Louisiana, 44
Lovett, William A., Ch. 14, n. 21
Lowi, Theodore J., Ch. 15, n. 41
Lutz, Donald S., Ch. 2, nn. 12, 20
Lynyrd Skynyrd, 87

Mackenzie, G. Calvin, Ch. 15, n. 30
Maclay, William, Ch. 2, nn. 5, 6
Maddox, William S., Ch. 1, n. 28
Madison, James, 65, 270, 378
Constitution and, 25, 41, 58
on factions, 52, 53, 231, 232
Madsen v. *Women's Health Center*, 95
Magleby, David B., Ch. 6, n. 12
Magna Carta, 31
Mahoney, Katheryn M., Ch. 5, n. 29
Maine, 203
Maisel, L. Sandy, Ch. 6, nn. 26, 29
Majority, power of, 16
Majority leader, 271
Majority opinion myth, 127–128, 149–150
Majority rule, 15
Malbin, Michael J., Ch. 7 nn. 6 22, Ch. 10, n. 30
Manipulation myth, media and, 235, 246, 254–255
Mann, Thomas E., Ch. 10, n. 30
Mapp, Dollree, 106–107
Marbury, William, 378–379
Marbury v. *Madison*, 42, 56, 378
Marcus, Alfred E., Ch. 12, n. 34
Markup session, 278
Marmor, Theodore R., Ch. 14, n. 38
Marriage, same-sex, 121
see also Homosexual rights
Marshall, John, 41, 65, 91, 378–379
Marshall, Thurgood, 113, 229 (illus.), 370, 371, 382
Marshall Plan, 449
Martin, Roscoe C., Ch. 3, n. 18
Martinez, Mel, 149
Marxist-Leninism, 19
Maryland, 39
Mashaw, Jerry L., Ch. 14, n. 38
Massachusetts, 44
Massive retaliation strategy, 456
Matching grants, 68
Matthews, Chris, 244
Mayflower Compact, 32
Mayhew, David R., Ch. 10, nn. 9–10
McArthur, Douglas, 297 (illus.)
McCaffery, Jerry, Ch. 10, n. 15
McCain, John, 8 (illus.), 191, 248
McChesney, Robert W., Ch. 9, n. 10
McClure, Robert D., Ch. 7, n. 7
McCubbins, Matthew, Ch. 10, n. 19
McCulloch v. *Maryland*, 39, 65
McGlen, Nancy, Ch. 5, n. 53
McIlwain, Charles Howard, Ch. 2, n. 13
McIver, John P., Ch. 5, n. 14
McKinley, William, 178 (illus.), 179
McKitrick, Eric, Ch. 3, n. 2
McLuhan, Marshall, 50
Meat Inspection Act of 1907, 417
Media, 234–256
broadcast media, 237–238
campaign role of, 194–195, 247, 248–250
concentrated ownership of, 238, 240, 245
and Congress, 253–254
and courts, 254
and government officials, 250–251
government regulation of, 241–242
and Internet, 235, 236, 241
and local television, 239
management of, 444–445
manipulation myth of, 235, 246, 254–255
new, 248–249
and newsworthiness, 242–244
penny press, 236–237
political agenda of, 246–247
and political socialization, 131–133
and polls, 134, 249
and president, 251–253
and primaries, 182
priming and pseudo-events by, 247
and public opinion, 244, 246, 249
tabloid journalism, 243–244
see also specific media
Medicaid, 83, 122, 413–414
Medicare, 415
Meese, Edward, 379
Meier, Kenneth J., Ch. 14, n. 50
Meritor Savings Bank v. *Vinson*, 119
Merit selection, of judges, 373
Merit system, bureaucratic, 324, 342
Metallica, 98
Mexican Americans, 141, 148
Mexico, 288, 428
Mezey, Michael L., Ch. 11, n. 25
Mezey, Susan Gluck, Ch. 4, n. 81
MGM (film studio), 245
Michel, Robert, 271
Microsoft Corporation, 408
Middle East, 432, 436, 438
U.S. policy in, 445–446

see also specific country
Military-industrial complex, 393
Military strategies
alternative, 456–457
base closings and, 454–455
incrementalism in, 347–348
military actions, 455 (tab.)
spending, 345, 424, 451–455
Vietnam lessons and, 11, 444, 445
see also Foreign and defense policy
Milkis, Sidney M., Ch. 14, n. 51
Miller v. *California*, 99
Miller v. *Johnson*, 261
Mine Health and Safety Administration (OSHA), 420
Minorities
affirmative action and, 122
in bureaucracy, 323
as court appointees, 148, 149, 229, 371–372
opinions of, 141
participation by, 115, 148–149, 197, 198
and redistricting, 261
Minority leader, 271
Minority parties, 168–170, 171
Miranda v. *Arizona*, 105–106
Mississippi Burning (film), 87
Missouri, 109
Missouri plan, 373
Mr. Smith Goes to Washington (film), 281
Mitchell, Billy, 348
Mitchell v. *Helms*, 101
Mobocracy, 15
Model Cities program, 69, 77
Moe, Terry M., Ch. 12, n. 46
Mondale, Walter, 310
Monetarists, 398
Monetary policy, 395–396
Money, special interests and, 220–222
see also Campaigns, financing of
Monopolies, breakup of, 407–408
Monroe, Allan D., Ch. 6, n. 15
Monroe Doctrine, 427
Montesquieu, Charles de, 33, 37, 41
Montgomery (Alabama) bus boycott, 114
Mood theory, 446
Moore, R. Laurence, Ch. 2, n. 22
Moore, Raymond A., Ch. 11, n. 23
Morin, Richard, 138, Ch. 5 n. 18
Morrill Act (1862), 67
Morris, Gouverneur, 29
Morris, Robert, Ch. 14, n. 37
Moyers, Bill, 251
MP3, 98
Murphy, Walter F., Ch. 2, n. 5
Murray, Alan S., Ch. 14, n. 14
Murray, Charles, Ch. 14, n. 41
Murrow, Edward R., 238
Music, popular myths in, 5, 6, 87, 98, 206
Muskie, Edmund, 185, Ch. 15, n. 28
Mutual assured destruction (MAD), 456
Myths
about president, 286, 311, 315
of absolute liberty, 90, 100, 124
of American vulnerability, 425–426, 437, 458
of broken electoral promises, 179, 199, 205–207
of bureaucracy, 319–320, 322, 334, 353
of Congressional ineffectiveness, 22, 258, 280, 282
of Constitution, 26–27
of government, 8–12, 386–388, 421
of interest group corruption, 11, 212, 216, 231–232
of intergovernmental relations, 63, 87–88
of majority opinion, 127–128, 149–150
of media manipulation, 235, 246, 254–255
of nonpolitical courts, 356, 372, 383
of party irrelevance, 153, 158–159, 174, 175
reasons to rely on, 9–10
see also Popular culture myths

NAACP, *see* National Association for the Advancement of Colored People
Nacht, Michael, Ch. 15, n. 2
Nader, Ralph, 214, 346, 420, Ch. 14, n. 39
as 2000 presidential candidate, 168, 171
NAFTA, see North American Free Trade Agreement
Napster, 98
Nash, Gerald D., Ch. 14, n. 18
Nast, Thomas, 162
Nathan, Richard P., Ch. 12, n. 30; Ch.15, nn. 34, 39
National Abortion Rights Action League (NARAL), 214, 229
National Aeronautics and Space Administration (NASA), 330, 331 (illus.), 342, 346, 392
National Association for the Advancement of Colored People (NAACP), 113, 214, 228, 229 (illus.), 359
National Association of Arab Americans (NAAA), 446
National Association of Community Health Centers (NACHC), 83–84
National Association of Counties, 84
National Association of Manufacturers, 222, 227
National Beer Wholesalers Association, 227
National Cable Television Association, 213
National Commission on Social Security Reform, 415
National Congressional Club, 218, 227
National debt, 266, 399–402, 410, 426
National Economic Council (NEC), 328, 440–441
National Federation of Independent Businesses, 227
National Governors' Association, 84
National Labor Relations Board (NLRB), 407
National League of Cities, 84
National Mass Transportation Act of 1974, 85
National Organization of Women (NOW), 215 (illus.)
National Partnership for Women & Families, 227
National Performance Review (NPR), 352–353
National Public Radio (NPR), 333
National Rifle Association (NRA), 212, 214, 222
National security advisor, 440
National Security Agency (NSA), 442
National Security Council (NSC), 307–308, 328, 440, 443, 450
National Space Council, 328
National supremacy, 57
National Taxpayers Union, Ch. 14, n. 39
Nation-centered federalism, 65
Native Americans, 260, 323
NBC (TV network), 238, 240, 248
Near v. *Minnesota*, 96
Nebraska, 168, 203
Necessary and proper clause, 39, 41, 264
Nelson, Candice J., Ch. 6, n. 12
Nelson, Michael, Ch. 11, nn. 3, 7
Neustadt, Richard, 310, Ch. 11, nn. 24, 29, 33–34
Neutrality, 426, 428, *see also* Isolationism
New Deal, 13, 335, 337, 395
New England, 17

New Hampshire, 44
New Hampshire primary, 181–182
New Jersey, 61–62, 101
New Jersey Plan, 37
New Republican Majority, 218
Newspapers
  concentrated ownership of, 240
  freedom of press and, 96–100
  penny press, 236–237
News programs, broadcast, 238–240, 242–244
Newsweek, 235
New World Order, 425
New York, 101
New York City, 84, 162, 389
New York Sun, 236–237
New York Times, 237, 242
New York Times v. *United States*, 96–97
New York v. *United States*, 75–76
Nicaragua, 272, 308, 443, 448, 449, 450
Nie, Norman H., 144, Ch. 5, nn. 42, 44, 48
Niemi, Richard G., Ch. 5, nn. 13–14, 51, 55–57, 59; Ch. 6, nn. 14, 18, 32; Ch. 7, nn. 9 11
Nineteenth Amendment, 46, 47 (tab.), 116, 196–197, 260
Ninth Amendment, 43 (tab.)
Nixon, Richard M., 99, 185, 293, 328, 352
  and China, 296
  court appointments by, 370 (tab.), 382
  debate with Kennedy, 194, 238
  EPA creation by, 341, 391
  and grant system reform, 72, 77, 78
  impeachment of, Ch. 2, n. 41
  impounding of funds by, 302
  and Kissinger, 308, 440
  limited access to, 312
  and Soviet détente, 431, 432
  staff organization of, 309
  and Vietnam War, 290, 298, 430
  and Watergate scandal, 166, 199, 290, 294, 301
Nixon, Walter, 372
Noll, Roger C., Ch. 14, n. 35
Nominating conventions, 147, 180, 183–184, 227, 247–248
Nomination process, 180–184
Nonpartisan elections, 181, 373
North, Oliver, 328
North American Free Trade Agreement (NAFTA), 218, 291, 296, 405, 438, 442, 443
North Atlantic Treaty Organization (NATO), 430, 435
North Korea, 297, 429, 430, 438, 451
Norton, Mary Beth, Ch. 1, n. 23; Ch. 6, n. 25
Novak, Michael, Ch. 11, n. 12
Nuclear Regulatory Commission, 420
Nuclear war, 424, 438
Nuclear weapons, 450, 456

Oberst, Paul, Ch. 4, n. 66
O'Brien, David M., Ch. 9, n. 37; Ch. 13, nn. 15, 27
Obscenity, Supreme Court on, 97, 99–100
Occupation, of congressional members, 259
Occupational Safety and Health Administration (OSHA), 337, 420
Occupation Safety and Health Act (1970), 420
O'Connor, Karen, Ch. 5, n. 53; Ch. 8, n. 32
O'Connor, Sandra Day, 107, 147, 370 (tab.), 371, 375 (illus.), 376, 382
Office of Congressional Relations, 312–313
Office of Faith-Based and Community Initiatives, 414
Office of Legal Policy, 368
Office of Legislative Counsel, 276
Office of Management and Budget (OMB), 305, 306, 327, 343
Office of National Drug Control Policy, 328
Office of National Service, 328
Office of Personnel Management (OPM), 330
Office of the U.S. Trade Representative, 328, 442
Officer and A Gentleman, An (film), 433
Ogul, Morris S., Ch. 10, n. 35
Ohio, 404
Oil depletion allowance, 405–406
Oil embargo (1973), 426, 432, 446
Oil industry, 417
Oklahoma City bombing, 338–339
Okun, Arthur M., Ch. 14, nn. 4, 20
Oleszek, Walter J., Ch. 10, nn. 29, 34
Oliver, James K., Ch. 15, nn. 34, 39
Olson, Mancur, Ch. 8, n. 12
OMB, *see* Office of Management and Budget
Ombudsman, 351
O'Neil, Thomas "Tip," 275
O'Neill, Paul, 293 (illus.)
OPEC, *see* Organization of Petroleum Exporting Countries
Open primary, 181
Open race, 189
Operation Rescue, 145, 231
Oppenheimer, Bruce I., Ch. 10, nn. 22, 28
Opportunity structure, 180
Oral arguments, Supreme Court, 375–376
Oregon, 102, 111
Oregon v. *Mitchell*, 381
Organization of Petroleum Exporting Countries (OPEC), 426, 432
Ornstein, Norman J., Ch. 10, n. 30; Ch. 15 n. 28
Orr, Elizabeth, Ch. 6, n. 12
Osborne, David, 352, Ch. 3, nn. 26, 31; Ch. 12, n. 48
Ostrogorski, M. I., Ch. 7, n. 8
Oversight, congressional, 267–269
Owen, Bruce M., Ch. 14, n. 35

PACs, *see* Political action committees
Padover, Saul K., Ch. 2, n. 10
Page, Benjamin I., Ch. 1, n. 6; Ch. 9, n. 18; Ch. 15, n.40
Paine, Thomas, 33
Pakistan, 438
Paley, William, 238
Palko v. *Connecticut*, 92
Palmer, Kenneth T., Ch. 3, n. 19
Panama Canal, 434
Panama invasion, 291, 299
Pangle, Thomas L., Ch. 2, n. 19
Parents' Fair Share program, 350
Parker, Alan, 86
Parks, Rosa, 114
Parliament, British, 31
Parochialism, bureaucratic, 349
Participation, *see* Political participation
Partisan elections, 181, 373
Party-centered campaigns, 174, 195–196
Party whips, 271
Paternalism, 116
Patronage system, 170, 323, 372
Patterson, Thomas E., 248, Ch. 9, nn. 17, 24; Ch. 14, n. 40
Pauley, Jane, 90
Payne v. *Tennessee*, 108
Peace Corps, 388, 390
Peace dividend, 424, 453
Pear, Robert, Ch. 3, nn. 27, 40
Peltason, Jack, Ch. 13, n. 25
Pendleton Act (1883), 324
Penn, William, 58
Pennsylvania, 101
Penny press, 236–237
Pentagon, *see* Defense Department; Military

Pentagon Papers case, 96–97
People for the American Way, 229
Perot, H. Ross, 168, 248, 402
Persian Gulf War, 250, 299, 434, 436
  media management in, 445
  public support of, 447
  see also Iraq, war with
Personal Responsibility and Work Opportunity Reconciliation Act (1996), 78, 409, 410–414
Pertschuk, Michael, 420
Peters, Charles, Ch. 9, n. 32
Peters, Mark D., Ch. 9, n. 21
Petersen, George E., Ch. 3, nn. 22–23
Petersen, Merrill D., Ch. 2, n. 2
Pfiffner, James P., Ch. 10, n. 14; Ch. 11 n. 23
Pious, Richard M., Ch. 11, nn. 20, 22, 36
Planned Parenthood of Southeastern Pennsylvania v. *Casey*, 110
Platforms, party, 159–161
Pleabargaining agreements, 358
Pledge of Allegiance, 132 (illus.)
Plessy v. *Ferguson*, 112, 113
Pluralist model of decision making, 393
Pluralist view, of power, 18
Plurality, 127
Pocket veto, 301
Poindexter, John, 328
Police powers, 65, 106–107
Policy adoption, 390–391
Policymaking
  and electioneering, 224–227
  interest groups and, 230
  issue networks for, 340–341
  see also Economic policy; Foreign and defense policy; Public policy
Policy subgovernments, 340–341
Political action committees (PACs), 173, 216–218
  and campaign funding, 186, 188, 195–196, 221
  electioneering by, 224–227
Political clubs, 170
Political consultants, 194, 196
Political culture, 130
Political drama, federalism and, 61–63
Political efficacy, 131
Political identity myth, 9–10
Political leaders, 337
Political participation, 142–149
  influences on, 146
  levels of, 144–145
  of minorities, 144, 148–149, 184, 197, 198
  and public opinion, 128
  of women, 28, 146–148, 184 (illus.)
Political parties
  bottom-up structure of, 170–173
  and campaigns, 174, 188–189, 195–196
  cartoons about, 162–163
  compared, 156–158
  Congressional voting and, 280
  court appointments and, 372, 383
  decentralization of, 155, 170, 172
  defined, 153
  division of, 167–168
  elections and, 161, 163, 181–183
  in Europe, 20, 153–154, 167, 168
  functions of, 159
  in government, 155, 163–164
  history of, 164–165
  identification with, 131, 153, 156, 157 (tab.), 200
  ideologies of, 154
  and independents, 158–159
  and interest groups compared, 212–213
  irrelevance myth and, 153, 158–159, 174
  national organization of, 172–173
  nominating conventions of, 147, 180, 183–184, 227, 247–248
  organization of, 155
  PACs and, 227
  platforms of, 159–161
  president and, 312
  public opinion of, 153, 164
  realignment of, 165–166
  and state laws, 168
  third parties, 168–170, 171
  voter identification, 200
  see also Campaigns; Elections; *party by name*
Political power, *see* Power(s)
Political socialization, 130–133
Politics, 12, *see also* Elections; Government; Public opinion
Polity, 15
Polk, James, 288
Polls
  on bureaucratic performance, 320
  in campaigns, 192–193, 249
  public opinion, 127, 134–135, 249
Pollution, policymaking and, 389, 391
Pomper, Gerald M., 159, Ch. 6, nn. 15–16, 30; Ch. 7, n. 39, Ch. 9, n. 27
Poor
  aid to, 78, 82, 387, 408, 409–414
  health care for, 83, 122, 413–414
Popper, Karl R., Ch. 1, n. 20
Popular culture myths, 50–51, 98, 206
  and conspiracy theories, 3, 5–6
  in film, 3, 5, 86–87, 206, 245, 281, 311, 433–434
  and political cartoons, 6, 162–163, 230
  and television, 50–51, 143, 365, 418–419
  see also Myths
Popular sovereignty, 33
Populism, 21
Pork-barrel legislation, 54, 262
Pornography, rulings on, 99
Port Authority of New York and New Jersey (PANYNJ), 61–62
Porter, Michael E., 426, Ch. 15, n. 3
Posner, Richard A., Ch. 13, n. 23
Postman, Neil, 50, 51
Powell, Ozie, 104
Power of recognition, 296
Power(s)
  concurrent, 39
  Congressional, 39, 41, 288–289, 296–299
  delegated, 39
  elitist *vs.* pluralist view of, 18
  of interest groups, 218–219
  judicial, 42
  limiting governmental, 42–43
  limiting national, 39–41
  local government, 17
  majoritarian view of, 16
  presidential, 53, 54, 268, 289–291, 296–302
  public attitudes on, 63–64
  sharing of, 18–19, 63
  state government, 17, 40 (tab.), 41, 42–43, 63, 80, 263
Prayer, in public schools, 101–102, 382
Precincts, 170, 180
Preferments, 170
Preferred freedoms test, 94
Pregnancy Discrimination Act (1978), 118
Presidency
  and bureaucracy, 323, 327–331, 351–353
  and cabinet, 305–306
  and campaign promises, 181–183, 207 (tab.)
  checks and balances on, 54–56
  and Congress, 288–289, 293, 299, 301–302
  executive office of, 306–308, 316
  first, 287–288
  imperial, 290

and intergovernmental relations, 77–78
modern power in, 289–291
roles and duties of, 42
and separation of powers, 53
stewardship theory of, 289
veto power of, 54, 300–302
and vice-president, 309–310
white house office, 308–309
President
appointments by, 292, 296, 368, 372
balanced budget and, 266
bureaucracy and, 334, 343–344
as chief diplomat, 294–296
as chief executive, 292–294
as chief legislator, 299–302, 304
as chief of state, 292
Congress and, 310, 312–313, 315
defense and foreign policy role of, 440–441
lobbying staff of, 312–313
media and, 251–253, 444–445
myths about, 286, 311, 315
policymaking by, 388, 390
public opinion of, 291, 313–315
regulatory commissions and, 331–332
war powers of, 268, 296–299
Presidential election of 2000, 45, 61–63, 132, 149, 166, 194, 199–201, 202, 203, 291
campaign finance and, 179, 182, 185, 187, 188–189, 190, 192
incumbents in, 189, 192, 261
Internet use in, 248
PAC contributions in, 188, 244–246
party alignment in, 166
party platforms compared, 160–161 (tab.)
third party in, 171, 202
voter turnout in, 142–143, 145
Press
freedom of, 96–100
leaks to, 252–253
see also Media; Newspapers
Press conferences, 251–252
Prestowitz, Clyde V., Jr., Ch. 1 n. 11; Ch. 15, n. 5
Primaries, 163, 181–183, 187
Priming, by media, 247
Prior restraint, 96
Pritchett, C. Herman, Ch. 4, nn. 23, 74
Privacy rights, 19 (illus.), 20, 109, 119, 123
Private sector
and bureaucracy compared, 320
government contracts to, 326 (illus.)
and government corporations compared, 332
see also Business
Privatization, 351
Privileges and immunities clause, 43, 49
Probable cause, 106
Professionalism, bureaucratic, 346
Project grants, 68
Property taxes, and education, 70
Proportional representation, 167
Proposition 187, 121–122
Protestants, 141–142, 157, 184, 371
Protests, 144–145
anti-abortion, 145, 231
civil rights, 114
against Vietnam war, 94, 166
women's suffrage, 116
Provine, Doris Marie, Ch. 13, n. 14
Proxy administration, 326
Pseudo-events, 247, 249
Public accommodations, segregation in, 112, 114–115
Public affairs, on television, 239
Public Broadcasting System (PBS), 333
Public Citizen, Inc., 214, Ch. 14, nn. 30, 39
Public officials
ethics of, 136–137
and interest groups, 215–216, 219, 223–224
and media, 246, 247, 250–251
minorities as, 148–149
polling by, 135
see also Bureaucracy; *and specific officials*
Public opinion, 126–151
of bureaucracy, 320, 337, 338
defined, 129
factors influencing, 130–133
and foreign and defense policy, 446–448
and lobbying, 228
and majority opinion myth, 127–128, 149–150
media management and, 444–445
paradox of, 136–137
and participation, 128, 142–149
of political parties, 153, 164
polls of, 127, 134–135, 249
of president, 291, 313–315
public policy and, 127, 142
race and ethnicity and, 140–141
of state government, 64, 80, 138
television and, 143
toward federalism, 63
variables in, 129–130
on welfare, 387
Public policy
bureaucratic role in, 327
and campaign promises, 205–207
decision making models for, 392–393
defined, 388
and EOP agencies, 328
myths of, 386–388
and political parties, 159, 164, 175
and politics, 12
and president, 299
and public opinion, 127, 142
stages in making, 389–391
television program about, 418–419
see also Economic policy; Foreign and defense policy; Social policies
Public schools, see Schools, public
Public-sector interest groups, 84
Puerto Ricans, 141, 148
Pulitzer, Joseph, 237
Pure Food and Drug Act of 1906, 417
Putnam, Robert D., Ch. 1, n. 27

Quarles, Benjamin, 105
Quasi-judicial functions, 332
Quasi-legislative functions, 332
Quid pro quo harassment, 119

Race, and redistricting, 261
Racism, 111–115
see also African Americans; Minorities
Radio, 237–238, 248
Radiohead (rock group), 206
Rakove, Jack N., Ch. 2, n. 39
Randall, J. G., Ch. 3, n. 11
Random probability sampling, 134
Rankin, Jeanette, 260
Ranney, Austin, 246, Ch. 9, n. 20
Rational model of decision making, 392
Reagan, Ronald, 85, 122, 273, 309, 450
and budget, 279, 336
and bureaucracy, 343, 352
cabinet of, 305
and Central America, 443, 447, 448–449
and Congress, 54, 272, 313
court appointments by, 368, 369, 370 (tab.), 382
deregulation by, 408
and EPA, 341
and federal grant reform, 72–74, 78
and Iran-Contra affair, 272, 308, 328
legislative program of, 273
and military spending, 342, 434, 451, 457
organizational style of, 309
pardons by, 293
press conferences of, 252
public popularity of, 313, 446

tax cuts by, 265
as tethered president, 290–291
war power of, 298–299
Reapportionment: 2000, 269 (tab.)
Reconciliation, 265
Recording Association of America, 98
Recording industry, 98
Reddy, Patrick, Ch. 5, nn. 37, 58
Referendum, 16
Reform party, 168, 171
Regents of the University of California v. *Bakke*, 122
Regulation, of media, 241–242
Regulatory commissions, 331–332
Rehnquist, William H., 75, 119, 370 (tab.), 375 (illus.), 382
on crime and due process, 105–106
on free speech, 95
on privacy rights, 109–111
Reich, Robert B., Ch. 1, n. 12; Ch. 14, n. 39
Reinventing government, 352–353
Reitz, Ken, 247
Religion
freedom of, 100–103
Judeo-Christian traditions, 32
opinion and, 141–142
and political socialization, 133
Religious Freedom Restoration Act of 1993, 103
Rembar, Charles, Ch. 2, n. 18
Reno, Janet, 268 (illus.)
Reno v. *American Civil Liberties Union*, 99
Representative democracy, *see* Republic
Republic, 15–16
Republicanism, 52
Republican party, 26, 159, 227
background of, 164
campaign funding and, 188
control of Congress by, 166, 260–261, 272, 276, 291, 402
and Democrats compared, 156–158
nominating conventions and, 183–184
2000 platform of, 160–161 (tab.)
and Reagan's budget cuts, 279
realignment of, 166
seniority rule and, 274
Reserved powers, 41
Resolution Trust Corporation (RTC), 333
Retirement benefits, 414, 415–417
Reynolds, Burt, 87
Rhode, David W., Ch. 7, nn. 21, 34
Richard, Patricia Bayer, Ch. 6, n. 11
Richardson, Bill, 149
Richardson, Richard J., Ch. 13, n. 1
Riders (provisions), 302
Right to counsel, 104–106
Riker, William H., Ch. 3, n. 8
Ritter, Willis, 374
Rivers, Douglas, Ch. 11, n. 38
Road Runner (internet service), 241
Robertson, James Oliver, Ch. 1, nn. 7, 15
Robinson v. *California*, 107
Rockman, Bert, Ch. 1, n. 27; Ch. 12, n. 31
Rocky Mountain Arsenal, 349
Roelofs, H. Mark, Ch. 1, nn. 13, 25
Roe v. *Wade*, 109–110
Rogers, William P., 308
Romer v. *Evans*, 119–120
Romzek, Barbara S., Ch. 12, n. 49
Roosevelt, Franklin D., 134, 238, 352, 387
death of, 310
executive order by, 306
national debt and, 400
New Deal of, 335, 337, 395
organizational style of, 308
presidential power of, 289–290, 297, 301
Roosevelt, Theodore, 289, 295, 352, 371
Rose, Nancy L., Ch. 11, n. 38
Rosecrance, Richard, Ch. 15, n. 4
Rosen, Bernard, Ch. 12, n. 37
Rosenbloom, David H., Ch. 2, n. 37; Ch. 12, n. 37
Rosenfeld, Stephen, Ch. 15, n. 37
Rosenstiel, Tom, Ch. 9, n. 15
Rosenstone, Steven J., 198, Ch. 7, nn. 29–31
Rossiter, Clinton, Ch. 11, n. 26
Roth v. *United States*, 99
Rourke, Francis E., Ch. 12, n. 23
Rousseau, Jean-Jacques, 33
Rovner, Julie, Ch. 14, n. 12
Rozell, Mark J., Ch. 8, n. 1
Ruckelshaus, William, 341
Rule of law principle, 49, 51, 356
Rules Committee, House of Representatives, 273, 279
Run-off primary, 181
Rush, Kenneth, Ch. 15, n. 28
Russell, Francis T., Ch. 7, n. 2
Russett, Bruce, Ch. 15, n. 43
Russia, 296, 436, 438
see also Soviet Union
Rutledge, John, 372
Rwanda, 449

Sabato, Larry J., Ch. 7, n. 25
Saliency, of opinion, 129
Salisbury, Robert H., Ch. 8, n. 10
Salmore, Stephen A. and Barbara G. Salmore, Ch. 7, nn. 1, 3
Sante Fe Independent School District v. *Doe*, 102
Satterfield, David E., III, Ch. 3, n. 29
Saudi Arabia, 299, 445–446
Saunders, Harold H., Ch. 15, n. 39
Savas, E. S., Ch. 12, n. 45
Saving Private Ryan (film), 433–434
Sax, Linda J., Ch. 5, n. 29
Scalia, Antonin, 103, 107, 120, 370 (tab.), 375 (illus.), 382
Schattschneider, E. E., Ch. 6, nn. 14, 23; Ch. 8, n. 13
Schellhas, Bob, Ch. 2, n. 3; Ch. 14, n. 27
Schenk v. *United States*, 93–94
Schick, Allen, Ch. 10, n. 14
Schlesinger, Arthur M., Jr., 13, 290
Schlesinger, Joseph, 180
Schlozman, Kay Lehman, Ch. 5, n. 42; Ch. 8, nn. 4, 6, 8–9, 14–15, 21–22
Schmidhauser, John, Ch. 13, n. 9
Schneider, William, Ch. 2, n. 43
School Performance Review, 351
Schools, public, 70–72, 326
desegregation of, 113–114, 228, 377, 381, 382, 388
political socialization and, 131
prayer in, 101–102, 382
see also Education
Schopflin, George, Ch. 1, n. 9
Schram, Sanford E., Ch. 14, n. 43
Schwab, Robert, Ch. 14, n. 35
Schwartz, Thomas, Ch. 10, n. 19
Schwarz, John E., Ch. 14, n. 41
Scopes Monkey Trial, 86
Scottsboro defendants, 104 (illus.)
Search and seizure, 107–109
Search warrant, 106, 107
Second Amendment, 42, 43 (tab.), 92
Securities and Exchange Commission (SEC), 407, 408
Segregation, 112, 113–114, 228, 229
Seib, Gerald F., Ch. 15, n. 48
Seidman, Harold, Ch. 12, n. 16
Selective incorporation, 92
Select/special committees, 272
Seminole Indian Tribe of Florida v. *Florida*, 76
Senate, 45
and Clinton's impeachment, 286
corruption in, 281
election to, 179, 187, 189, 192
eligibility for, 258
floor procedure in, 279

Judiciary committee, 368, 370
leadership in, 271
and political appointees, 53, 54, 292, 323, 370
powers of, 270
treaty approval by, 294–295, 443
see also Congress
Senior Executive Service (SES), 324
Seniority system, Congressional, 274
Separate but equal doctrine, 113
Separation of powers, 53, 55 (fig.)
Sequestration, 266
Sevareid, Eric, 238
Seventeenth Amendment, 46, 47 (tab.), 270
Seventh Amendment, 42, 43 (tab.)
Sex, obscenity and, 99
Sex discrimination, 115–119
Sexual orientation, 119–121
Shannon, John, Ch. 3, n. 25
Shapiro, Richard, Ch. 10, n. 16
Shapiro, Robert Y., Ch. 1, n. 6; Ch. 9, n. 18; Ch. 15, n. 40
Sharkansky, Ira, Ch. 3, n. 35
Shay's Rebellion, 28, Ch. 2, n. 8
Shear, Jeff, Ch. 15, n. 49
Sherman Antitrust Act of 1890, 407
Shilts, Randy, Ch. 14, n. 10
Sierra Club, 212, 222
Simpson, O. J., trial of, 365, 366
Single-issue group, 214
Single-issue politics, 275
Single-member district electoral system, 167
Sixteenth Amendment, 47
Sixth Amendment, 42, 43 (tab.), 104
Skidmore, Max J., 130, Ch. 12, n. 14; Ch. 14, n. 49
Skocpol, Theda, Ch. 14, nn. 3, 13, 37
Slander, 97
Slaves and slavery, 38 (tab.), 65, 66 (illus.), 112, 115
Smith, Al, 184
Smith, Hedrick, Ch. 10, nn. 31–32
Smith, Stephen S., Ch. 10, n. 25
Smith, Tony W., 138
Smokestack chasing, 404
Smoller, Fred, 251, Ch. 9, n. 29
Snow, Donald M., Ch. 15, nn. 19, 21
Social identity, myth and, 9–10
Social insurance programs, 414–417
Socialist party, 154, 170
Socialization, political, 130–133
Social policies, 408–420
for elderly and disabled, 414–417
for poor, 78, 82, 83, 122, 387, 408, 109–414
and social regulation, 417–420
worker protection programs, 419–420
see also Welfare system
Social security, 85
Social Security Act of 1935, 68, 414
Social Security Administration (SSA), 330–331, 414–417
Soft money, 188–189, 191, 226
Somalia, 438
Sorauf, Frank J., Ch. 6, nn. 7, 22; Ch. 8, n. 23
Souter, David, 101, 107, 370 (tab.), 375 (illus.)
South
business incentives in, 404
image of, 86–87
party affiliation in, 156, 172
segregation in, 114
South Africa, 436, 449
South Carolina, 44
Southern Manifesto, 380
South Korea, 297–298, 426, 430, 451
South Vietnam, 430
see also Vietnam War
Soviet Union, 19–20, 296
aid to former, 449
Cold War alliances of, 428, 429, 439
containment of, 429–430
and end of Cold War, 424, 436
formal recognition of, 448
military spending and, 451
and nuclear arms issues, 438, 450, 456
Reagan and, 434–435
Spanish-American War, 237, 427
Speaker of the House, 270–271, 278
Speakes, Larry, 243
Spear, Joseph C., Ch. 9, nn. 21, 33–34
Special district governments, 17, 82
Special interests, 11. *see also* Interest groups
Speech, freedom of, 93–96, 186
Spin City (television program), 143
Spirit of the Laws (Montesquieu), 33, 37
Stability, of opinion, 129
Stahler, Jeff, 162
Stallone, Sylvester, 322, 433
Stamp Act (1765), 34
Standard operating procedures, 348
Standing committees, 272
Stanfield, Rochelle L., Ch. 3, n. 29
Stanford, Terry, 64
Stanley, Harold W., Ch. 5, nn. 13–14, 51, 55–57, 59; Ch. 6 nn. 18, 32; Ch. 7, nn. 9, 11
Stanton, Elizabeth Cady, 115, 146–147
Starr, Paul, Ch. 14, n. 13
Star Wars, 161
State-centered federalism, 65
State Department, 324, 441
States
administrative capability of, 80–81
business incentives by, 404–405
and campaign financing, 190
constitutions of, 44, 123, 303
court systems of, 123, 358, 364, 366, 373, 380
employees in, 335–336
and environmental policy, 391
and gerrymandering, 261
governor's power in, 303–304
and highway trust fund, 326
innovation by, 79–81, 350–351
interest groups for, 215–216
legislatures in, 169, 263–264
and national authority, 36–37
PAC funding and, 221
political parties in, 168, 169, 171, 172
powers of, 17, 40 (tab.), 41, 42–43, 63, 80, 263
public confidence in, 64, 80, 138
school funding by, 70
and welfare reform, 78, 408–409, 411–412
see also Intergovernmental relations
Statutory law, 357
Steiger, Rod, 86
Stein, Herbert, Ch. 14, n. 6
Stevens, John Paul, 99, 102, 262, 370 (tab.), 375 (illus.)
Stewart, Jimmy, 281
Stewart, Potter, 99, 377
Stockman, David A., Ch. 3, n. 21; Ch. 12, nn. 20, 29
Stock markets, 426
Stone, Oliver, 5
Stone, W. Clement, 185
Strange Career of Jim Crow, The (Woodward), 112
Strategic Defense Initiative (SDI), 457
Straw polls, 134
Student Loan Marketing Association, 327
Student loans, 328
Students
Chinese massacre of, 435
civil rights of black, 113–114, 146
political affiliation of, 154, 178
political views of, 139
volunteer work by, 145
see also Education; Schools, public
Suffrage, for women, 116
see also Voting rights
Suicide, doctor-assisted, 110–111

Sumner, Charles, 65, 66 (illus.)
Sundquist, James L., Ch. 6, n. 20; Ch. 12, n. 33
Sunstein, Cass R., Ch. 2, nn. 35, 36
Supplemental Security Income (SSI), 122, 412, 413
Supply-side economics, 406–407
Supremacy clause, 43, 57
Supreme Court, 375 (illus.)
  appellate work of, 363–364
  appointments to, 53, 229, 368–371
  conference work of, 376–377, 391
  implied powers and, 39, 41
  as judiciary symbol, 358
  media and, 254
  myth of finality and, 356
  opinions, 377
  oral arguments by, 375–376
  policymaking by, 390–391
  and states, 80, 123
  women and minorities on, 147, 370, 371–372
Supreme Court decisions, 362–364
  on abortion, 109–110
  and absolute liberty, 124
  on affirmative action, 122–123
  on Bill of Rights and states, 91–92
  on blanket primaries, 181
  on campaign contributions, 186
  and Congress, 57, 362, 363, 381–382
  Constitution and, 359, 362–363, 378–380
  on cruel and unusual punishment, 107–109
  on doctor-assisted suicide, 110–111
  on dual federalism, 66–67, 75–76, 77
  on freedom of press, 96–97, 99–100
  on free speech, 93–96
  on homosexual rights, 119–121, 123
  on illegal aliens, 122
  on legislative veto, 269
  on line-item veto, 302
  lower court compliance to, 123, 380–381
  on police powers, 65, 105, 106–107
  president and, 294, 345
  against racism, 112–115
  on redistricting, 261
  on religious freedom, 100–103
  on right to counsel, 104–106
  on school segregation, 113–114, 228, 377, 381, 382, 388
  on sex discrimination, 116–118, 119
  on term limits, 262, 263–264
  on voting rights, 115, 197
"Sweet Home Alabama" (song), 87
Syed, Anwar, Ch. 3, n. 37
Symbolic speech, 94–96

Tabloid journalism, 243–244
Taft, William Howard, 352
Taiwan, 432
Tammany Hall Democratic machine, 162
Tariffs, 403, 405
Taxes, 39, 228, 400
  Congress and, 264–265
  incentives, 405–406
  income, 265, 343, 391, 405
  party platforms on, 160
  school funding by, 70
  social security, 415
  as trust funds, 84–85
Tax Reform Act (1986), 265
Taylor, Jeffrey, Ch.8, n. 24
Teeter, Robert, Ch. 1, n. 1; Ch. 5, n. 43; Ch. 12, n. 3
Television, 50–51, 187
  cable, 100, 195, 213, 240
  in campaigns, 132, 194–195, 227
  local, 239, 245
  news programs of, 238–240, 242–244
  nominating conventions on, 247–248
  and political socialization, 131–133
  and public opinion, 143, 246
  and public policy myths, 418–419
Temporary Assistance to Needy Families (TANF), 411–412, 413
Tennessee Valley Authority (TVA), 333
Tenth Amendment, 41, 43 (tab.)
Term limits, 262, 263–264
Terrorists, 452
Texas v. *Johnson*, 94
Thayer, George, Ch. 7, n. 15
Thin Red Line, A (film), 433
Third Amendment, 42, 43 (tab.)
Third parties, 168–170, 171
Third World, 430, 449, 452
Thirteenth Amendment, 47, 111–112
Thomas, Clarence, 148, 229, 370, 375 (illus.), 382
Thompson, Kenneth W., Ch. 15, n. 28
Three Kings (film), 434
Thurmond, Strom, 279
Tiananmen Square massacre, 435
Tierney, John T., Ch. 8, nn. 4, 6, 8–9, 14–15, 17, 21–22
Time, Inc. v. *Firestone*, 97
Time Warner, 240, 241
Tobacco industry, 228
Tobacco subgovernment, 340, 347
Tocqueville, Alexis de, 386
Tolchin, Susan J. and Martin Tolchin, Ch. 14, n. 36
Tomorrow Never Dies (film), 245
Top Gun (film), 433
Tower, John, Ch. 15, n. 47
Town meeting, 17
Trade
  associations for, 213, 445
  balance of, 403, 426
  party platforms on, 161
  policies, 403, 405, 438, 442, 443, 449
Transportation, funding for, 85, 326
Treasury Department, 330, 344, 442
Treaties, 449–450
  Senate ratification of, 54, 294–295, 443
Trial courts, 358, 364–366
Tribe, Laurence H., Ch. 13, nn. 6, 22
Truckers' protest, 231
Truman, Harry S, 297 (illus.), 300, 428
  bureaucracy and, 352
  on Eisenhower, 310
  on foreign policy, 294
  Korean War and, 297–298, 430
Trust funds
  social security, 414, 415–417
  for transportation, 85, 326
Tucker, Jim Guy, 304
Tucker, Robert C., Ch. 1, nn. 14, 16, 26
Tweed, William Macy "Boss," 162
Twelfth Amendment, 38, 46, 47 (tab.)
Twentieth Amendment, 46, 47 (tab.)
Twenty-fifth Amendment, 309
Twenty-first Amendment, 45, 47 (tab.), 48
Twenty-second Amendment, 46, 47 (tab.)
Twenty-third Amendment, 46, 47 (tab.)
Twenty-fourth Amendment, 46, 47 (tab.), 197
Twenty-fifth Amendment, 46, 47 (tab.), 309
Twenty-sixth Amendment, 46, 47 (tab.), 197, 381
Twenty-seventh Amendment, 46, 47 (tab.)
Two Treatises on Government (Locke), 33

Ukraine, 438
Ulrich, Lars, 98
Understanding Media (McLuhan), 50
Unemployment insurance, 414, 415
Unfunded mandates, 74–75
Unicameral congress, 37
Unilateralism, 427, 430
Union County (NJ), 61
Unitary system, of government, 36–37
United Kingdom, 163. *see also* Britain

United Nations, 428, 445
U.S. Chamber of Commerce, 212, 213, 218, 222, 227
U.S. Conference of Mayors, 84, 216
U.S. Term Limits Inc. v. *Thorton,* 262, 263
U.S. v. *Eichman,* 95
U.S. v. *Nixon,* 294
U.S. v. *Playboy Entertainment Group,* 99
U.S. v. *Virginia,* 117
USDA Forest Service, 324
  firefighters, 319, 330
United States Information Agency (USIA), 442
United States Postal Service (USPS), 325–326, 333, 335, 421
United States Student Association, 212
Universities/colleges, 211
Urban focus, intergovernmental, 68–69
  see also Cities, federal funding for

Van Buren, Martin, 288
Veneman, Ann, 147
Ventura, Jesse, 171
Verba, Sidney, 144, Ch. 5, nn. 42, 44, 48
Vermont, 44, 121
Veto power
  legislative, 268–269
  line-item, 54, 302
  of president, 300–302
Video news release (VNR), 248
Vietnam war, 199, 298, 446, 450
  cost of, 451
  end of, 430, 431
  films about, 433
  lessons from, 444, 445
  myth of, 11
  protests against, 94, 166
Vig, Norman J., Ch. 12, n. 28
Vincent, W. S., Ch. 5, n. 4
Vines, Kenneth N., Ch. 13, n. 1
Virginia Military Institute (VMI), 117
Virginia Plan, 37
Volunteerism, 145–146
Voters
  direct participation of, 16
  independent, 156, 158–159
  polls of, 134
  turnout of, 179, 198–199
Voting
  and age, 146, 158, 197, 198
  Congressional, 280–282
  electoral college and, 203–205
  issues in, 199–200
  by minorities, 115, 148, 197, 198
  and party identification, 200, 280
  retrospective, 201
  see also Elections
Voting districts, 170
Voting rights
  for African Americans, 115, 146, 148, 196–197
  for women, 116, 146, 196–197
Voting Rights Act of 1965, 115, 197
Vulnerability, myth of, 425–426, 437, 458

Wage systems, bureaucratic, 325
Walker, David B., Ch. 3, nn. 15, 17
Wallace, George, 168
Wall of separation, 100
Walters, Jonathan, Ch. 3, n. 42
War, in popular culture myth, 433–434
  see also specific war
Wards (city council districts), 170
War on Drugs, 74, 437
War Powers Resolution Act (1973), 268, 298–299, 301, 443
Warren, Charles, 109
Warren, Earl, 94, 95, 117, 371
Wasby, Stephen, Ch. 13, nn. 7, 11
Washington, George, 29, 153, 336, 372
  cabinet creation by, 305
  cherry tree myth and, 8–9, 10 (illus.)
  foreign policy advice by, 426
  and French republic, 296
  on power of Senate, 270
  presidency of, 286–287, 292
  treaty-making and, 294
Watergate, 166, 199, 290, 294, 301
Wattenberg, Martin P., Ch. 6, nn. 10, 31
Wayne, Stephen, Ch. 11, n. 30
Weapons
  alternative strategies for, 456–457
  facility, 349
  nuclear, 450, 456
  sales of, 445–446
Webb, Gary, Ch. 1, n. 4
Webster, Daniel, 65, 224, 288, 309
Webster v. *Reproductive Health Services,* 109–110, 376
Weidenbaum, Murray L., Ch. 14, n. 52
Weinberger, Caspar "Cap," 342
Weisberg, Herbert F., Ch. 6, n. 14
Welfare Reform Act of 1996, 122
Welfare system, 68
  programs, 13, 157
  public opinion of, 387
  reform of, 78, 122, 390, 409–414
West Berlin, 429
Westlye, Mark C., Ch. 6, n. 12
West Virginia State Board of Education v. *Barnette,* 96
West Wing, The (television program), 418–419
Whicker, Marcia Lynn, Ch. 11, n. 23
Whig party, 164–165, 288
Whistle-blowers, 346
White, Byron, 119
White, Leonard D., Ch. 12, n. 17
White, Theodore H., 58
White House Office, 308–309, 327
White Lightning (film), 87
Wilcox, Clyde, Ch. 8, n. 1
Williams, Juan, Ch. 5, n. 34
Williams, Wayne C., Ch. 7, n. 1
Williamson, Hugh, 29
Williams v. *Saxbe,* 118–119
Wills, Garry, 3, 387, Ch. 2, n. 26; Ch. 14, n. 5
Wilson, James Q., Ch. 12, n. 43
Wilson, William Julius, Ch. 14, n. 41
Wilson, Woodrow, 164, 271, 289, 427–428
  on bills in committee, 278
  on Congress, 282
  League of Nations and, 295
Wings (film), 433
Winner-takes-all electoral system, 167
Wisconsin, 80, 181
Wisconsin v. *Yoder,* 102
Wise, David, Ch. 9, n. 30
Wolfinger, Raymond E., 198, Ch. 6, n. 12; Ch. 7, nn. 29–31
Women
  abortion rights of, 109–110, 123
  in bureaucracy, 322
  in Congress, 260
  as court appointees, 147, 371, 372
  interest group for, 215 (illus.)
  opinions of, 139
  in politics, 28, 146–148, 184 (illus.)
  rights of, 115–119
  voting rights of, 116, 196–197
Women's Equity League, 229
Wood, Gordon S., Ch. 2, n. 7
Wood, Grant, 19 (illus.)
Woodward, Bob, Ch. 1, n. 21; Ch. 13, n. 16; Ch. 14, n. 16; Ch. 15, nn. 25, 50
Woodward, C. Vann, 112
Worker protection programs, 419–420
World Trade Organization (WTO), 405, 406 (illus.), 438, 442
World War II, 290, 335, 337, 400, 428
World Wide Web, 179, 241
  see also Internet
Wright, Deil S., Ch. 3, n. 12

Wright, Gerald C., Ch. 5, n. 14
Wright, Jim, 271, 274
Wright, John R., Ch. 8, n. 23
Writ of certiorari, 364
Writ of habeas corpus, 42, 108
Writ of mandamus, 378–379
Wyckoff, Mikel L., Ch. 5, n. 12

X-Files, The (television program), 3, 311

Yankelovich, Daniel, Ch. 15, nn. 17, 45
Yellow journalism, 237

Zaire, 449

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